

**B 2**  
**STORAGE**





Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761114691843>











CA2 ON  
LR  
054

Continental  
Publications

# ONTARIO LABOUR RELATIONS BOARD REPORTS



**October 1989**





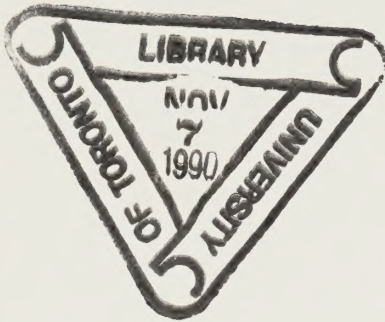
## ONTARIO LABOUR RELATIONS BOARD

*Chair* M.G. MITCHNICK

*Alternate Chair* R.O. MACDOWELL

*Vice-Chairs*

M. BENDEL  
L. DAVIE  
N.V. DISSANAYAKE  
R.A. FURNESS  
O.V. GRAY  
R.J. HERMAN  
B. HERLICH  
R.D. HOWE  
B. KELLER  
P. KNOPF  
J. McCORMACK  
M. NAIRN  
K. O'NEIL  
K. PETRYSHEN  
N.B. SATTERFIELD  
I.M. STAMP  
G. SURDYKOWSKI  
S.A. TACON



### *Members*

J. ANDERSON  
B.L. ARMSTRONG  
C.A. BALLENTINE  
F.C. BURNET  
W.A. CORRELL  
K.S. DAVIES  
M. EAYRS  
A.R. FOUCAULT  
W.N. FRASER  
W. GIBSON  
P.V. GRASSO  
A. HERSHKOVITZ  
M. JONES  
F. KELLY  
J. KENNEDY  
H. KOBRYN  
J. KURCHAK  
J. LEAR  
D.A. MacDONALD  
W.J. McCARRON  
C. McDONALD  
R.D. McMURDO

T. MEAGHER  
R.R. MONTAGUE  
J.W. MURRAY  
W.S. O'NEILL  
D.A. PATTERSON  
H. PEACOCK  
R.W. PIRRIE  
J. REDSHAW  
K.V. ROGERS  
J.A. RONSON  
M.A. ROSS  
M. ROZENBERG  
J.A. RUNDLE  
G.O. SHAMANSKI  
R.M. SLOAN  
E.G. THEOBALD  
J. TRIM  
S. WESLAK  
W.H. WIGHTMAN  
N.A. WILSON  
D.G. WOZNIAK

*Registrar* T.A. INNISS

*Board Solicitors* K.A. MacDONALD  
P.S. TOOP



CA20N  
LR  
054

# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**A Monthly Series of Decisions from the  
Ontario Labour Relations Board**

**Cited [1989] OLRB REP. OCTOBER**

**EDITOR: PERCY TOOP**

Selected decisions of particular reference value are also reported in *Canadian Labour Relations Boards Reports*, Butterworth & Co., Toronto.

Typeset, Printed and Bound by Union Labour in Ontario





## CASES REPORTED

1.	Ameri-Cana Motel Limited and 603185 Ontario Limited; Re C.J.A., Local 38.....	1009
2.	Calligaro Tile Company Limited; Re B.A.C. and The Ontario Provincial Conference of B.A.C.....	1014
3.	Chinook Chemicals Company, G. Lemaire and; Re E.C.W.U.....	1021
4.	Dunning Paving Limited, The Crown in Right of Ontario as represented by the Ministry of Transportation, and; Re O.P.S.E.U.; Re The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Barry Lightfoot; Re Smith Forestry Enterprises; Re Hotchkiss Forestry Enterprises; Re John Knight and Lorraine Norris c.o.b. as Agassiz Forestry/Environmental Services; Re Nicol Seguin; Re John McCormack; Re Elsie McCormack; Re The Crown in right of Ontario as represented by the Ministry of Government Services, and Wayne Forbes c.o.b. as Forbes Janitorial Services .....	1028
5.	Eddie Bauer, 162706 Canada Inc.; Re C.J.A., Local 27 .....	1041
6.	M. Pickard Construction Co. Ltd.; Re L.I.U.N.A., Ontario Provincial District Council; Re I.U.O.E., Local 793; Re Group of Employees .....	1046
7.	McLean Security, 445733 Ontario Ltd. c.o.b. as; Re U.S.W.A. ....	1048
8.	Mollenhauer Limited; Re C.J.A., Local 27; Re L.I.U.N.A., Local 183; Re Metropolitan Toronto Apartment Builders Association.....	1050
9.	P & M Electric Limited, Pomico Holdings Inc., P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited; Re I.B.E.W. Construction Council of Ontario, I.B.E.W., Local 105, I.B.E.W., Local 353; Re Group of Employees.....	1053
10.	P & M Electric Limited, Pomico Holdings Inc., P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited; Re I.B.E.W. Construction Council of Ontario, I.B.E.W., Local 105, I.B.E.W., Local 353; Re Group of Employees.....	1064
11.	Steinberg Inc., Miracle Food Mart Division and Oshawa Holdings Limited, c.o.b. as Dutch Boy Foods; Re U.F.C.W., Locals 175 & 633 .....	1066
12.	Venture Industries Canada Ltd.; Re C.A.W.; Re Group of Employees .....	1074

## COURT PROCEEDINGS

1.	G.P. Construction, 556631 Ontario Limited c.o.b. as; Re I.B.E.W., Local 1687, and the Ontario Labour Relations Board.....	1092
2.	Harbridge and Cross Limited; Re Ontario Council of Painters and Allied Trades and Ontario Labour Relations Board.....	1093





## SUBJECT INDEX

- Abandonment - Construction Industry - Union certified for predecessor company in 1972 - Predecessor company employing non-union labour for intermittent subsequent construction work - Union failing to take reasonable steps to monitor activity at fixed location of predecessor company - Board finding abandonment of bargaining rights - Union's related employer and sale of business applications for successor company dismissed
- AMERI-CANA MOTEL LIMITED AND 603185 ONTARIO LIMITED; RE C.J.A., LOCAL 38..... 1009
- Certification - Construction Industry - Applicant seeking certification under construction industry provisions - Evidence showing only two employees in bargaining unit - Employees in question not performing construction industry work for majority of time on date of application - Majority of time test appropriate to assist in determining whether employee falls within a construction "craft" - Application dismissed
- EDDIE BAUER, 162706 CANADA INC.; RE C.J.A., LOCAL 27 ..... 1041
- Certification - Construction Industry - Natural Justice - Practice and Procedure - Union filing certification application on terminal date of prior application by different union - First applicant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application
- M. PICKARD CONSTRUCTION CO. LTD.; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES ..... 1046
- Certification - Construction Industry - Practice and Procedure - Legislation not contemplating "interim certificate" requested by union - Board practice confined to issuing decision on appropriateness of certification on interim basis - Request denied
- P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES..... 1064
- Certification - Intimidation and Coercion - Unfair Labour Practice - Reference to two-tiered union dues made by ordinary employee soliciting union membership - Reasonable employee not likely to be influenced by statements of fellow employee lacking power over union dues and engaged in partisan salesmanship - Employees having opportunity to seek clarification - Inaccurate statements in literature distributed by employer and union mere partisan salesmanship - Board refusing to discount membership evidence and certifying union
- VENTURE INDUSTRIES CANADA LTD.; RE C.A.W.; RE GROUP OF EMPLOYEES..... 1074
- Certification - Natural Justice - Practice and Procedure - Security Guard - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem
- MCLEAN SECURITY, 445733 ONTARIO LTD. C.O.B. AS; RE U.S.W.A. .... 1048
- Certification - Petition - Practice and Procedure - Reconsideration - Timeliness - Petitions sent to



## II

Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely <i>prima facie</i> evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate	
P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES.....	1053
Certification - Practice and Procedure - Pre-Hearing Vote - Representation Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot	
MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION.....	1050
Construction Industry - Abandonment - Union certified for predecessor company in 1972 - Predecessor company employing non-union labour for intermittent subsequent construction work - Union failing to take reasonable steps to monitor activity at fixed location of predecessor company - Board finding abandonment of bargaining rights - Union's related employer and sale of business applications for successor company dismissed	
AMERI-CANA MOTEL LIMITED AND 603185 ONTARIO LIMITED; RE C.J.A., LOCAL 38.....	1009
Construction Industry - Certification - Applicant seeking certification under construction industry provisions - Evidence showing only two employees in bargaining unit - Employees in question not performing construction industry work for majority of time on date of application - Majority of time test appropriate to assist in determining whether employee falls within a construction "craft" - Application dismissed	
EDDIE BAUER, 162706 CANADA INC.; RE C.J.A., LOCAL 27 .....	1041
Construction Industry - Certification - Natural Justice - Practice and Procedure - Union filing certification application on terminal date of prior application by different union - First applicant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application	
M. PICKARD CONSTRUCTION CO. LTD.; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES .....	1046
Construction Industry - Certification - Practice and Procedure - Legislation not contemplating "interim certificate" requested by union - Board practice confined to issuing decision on appropriateness of certification on interim basis - Request denied	
P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES.....	1064
Construction Industry - Construction Industry Grievance - Employer failing to make proper income tax deductions from employee wages - Employer making deductions at later date - Union alleging breach of collective agreement and of <i>Employment Standards Act</i> prohibi-	

tion against wage set-off -Collective agreement authorizing income tax deductions - Overpayment not “wages” within meaning of *Employment Standards Act* - Grievance dismissed

CALLIGARO TILE COMPANY LIMITED; RE B.A.C. AND THE ONTARIO PROVINCIAL CONFERENCE OF B.A.C. .... 1014

Construction Industry Grievance - Construction Industry - Employer failing to make proper income tax deductions from employee wages - Employer making deductions at later date - Union alleging breach of collective agreement and of *Employment Standards Act* prohibition against wage set-off -Collective agreement authorizing income tax deductions - Overpayment not “wages” within meaning of *Employment Standards Act* - Grievance dismissed

CALLIGARO TILE COMPANY LIMITED; RE B.A.C. AND THE ONTARIO PROVINCIAL CONFERENCE OF B.A.C. .... 1014

Construction Industry Grievance - Judicial Review - First grievance dismissed following request to withdraw late in proceedings - No cause of action or issue estoppel in regards to this grievance - Whether Painters acquired bargaining rights by means of a working agreement signed between the Toronto Building and Construction Trades Council and the respondent - Respondent held bound to painters provincial agreement - Breach of sub-contracting clause - Application for leave to appeal to the Court of Appeal dismissed

HARBRIDGE AND CROSS LIMITED; RE ONTARIO COUNCIL OF PAINTERS AND ALLIED TRADES AND ONTARIO LABOUR RELATIONS BOARD ..... 1093

Crown Transfer - Timeliness - Union seeking declaration of Crown transfer for forestry survey and spraying contracted out by Ministry - Subject matter of contracts constituting “undertaking” within meaning of *Successor Rights (Crown Transfers) Act* - Undertakings “transferred” by tendering process - Transferees constituting “employers” - Performance of work by Crown employees immediately prior to transfer not prerequisite - Nothing in *Successor Rights (Crown Transfers) Act* to suggest union delay in seeking declaration releasing employer from effect of collective agreement - Board declaring Crown transfer

DUNNING PAVING LIMITED, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, AND; RE O.P.S.E.U.; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF NATURAL RESOURCES, AND BARRY LIGHTFOOT; RE SMITH FORESTRY ENTERPRISES; RE HOTCHKISS FORESTRY ENTERPRISES; RE JOHN KNIGHT AND LORRAINE NORRIS C.O.B. AS AGASSIZ FORESTRY/ENVIRONMENTAL SERVICES; RE NICOL SEGUIN; RE JOHN MCCORMACK; RE ELSIE MCCORMACK; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES, AND WAYNE FORBES C.O.B. AS FORBES JANITORIAL SERVICES ..... 1028

Intimidation and Coercion - Certification - Unfair Labour Practice - Reference to two-tiered union dues made by ordinary employee soliciting union membership - Reasonable employee not likely to be influenced by statements of fellow employee lacking power over union dues and engaged in partisan salesmanship - Employees having opportunity to seek clarification - Inaccurate statements in literature distributed by employer and union mere partisan salesmanship - Board refusing to discount membership evidence and certifying union

VENTURE INDUSTRIES CANADA LTD.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... 1074

Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer leasing trucks from employees - Term of arrangement that employees having right to drive own truck - Owner/driver of truck sharing with spare driver - Owner/driver opposing memorandum of settlement favoured by spare driver and revoking spare driver’s use of truck - Union seek-



#### IV

ing order that spare driver continue to drive truck - Injunctive relief inappropriate since loss of use of truck not result or effect of alleged breach - Complaint dismissed	
CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....	1021
Judicial Review - Related Employer - Unfair Labour Practice - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, <i>inter alia</i> , the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court - Application for leave to appeal to the Court of Appeal dismissed	
G.P. CONSTRUCTION, 556631 ONTARIO LIMITED C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD.....	1092
Judicial Review - Construction Industry Grievance - First grievance dismissed following request to withdraw late in proceedings - No cause of action or issue estoppel in regards to this grievance - Whether Painters acquired bargaining rights by means of a working agreement signed between the Toronto Building and Construction Trades Council and the respondent - Respondent held bound to painters provincial agreement - Breach of sub-contracting clause - Application for leave to appeal to the Court of Appeal dismissed	
HARBRIDGE AND CROSS LIMITED; RE ONTARIO COUNCIL OF PAINTERS AND ALLIED TRADES AND ONTARIO LABOUR RELATIONS BOARD.....	1093
Natural Justice - Certification - Construction Industry - Practice and Procedure - Union filing certification application on terminal date of prior application by different union - First applicant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application	
M. PICKARD CONSTRUCTION CO. LTD.; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES.....	1046
Natural Justice - Certification - Practice and Procedure - Security Guard - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem	
MCLEAN SECURITY, 445733 ONTARIO LTD. C.O.B. AS; RE U.S.W.A. ....	1048
Petition - Certification - Practice and Procedure - Reconsideration - Timeliness - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely <i>prima facie</i> evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate	
P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES.....	1053
Practice and Procedure - Certification - Construction Industry - Legislation not contemplating	

“interim certificate” requested by union - Board practice confined to issuing decision on appropriateness of certification on interim basis - Request denied

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES.....

1064

Practice and Procedure - Certification - Construction Industry - Natural Justice - Union filing certification application on terminal date of prior application by different union - First applicant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application

M. PICKARD CONSTRUCTION CO. LTD.; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES.....

1046

Practice and Procedure - Certification - Natural Justice - Security Guard - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem

MCLEAN SECURITY, 445733 ONTARIO LTD. C.O.B. AS; RE U.S.W.A. ....

1048

Practice and Procedure - Certification - Pre-Hearing Vote - Representation Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION.....

1050

Practice and Procedure - Certification - Petition - Reconsideration - Timeliness - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely *prima facie* evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES.....

1053

Pre-Hearing Vote - Certification - Practice and Procedure - Representation Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION.....

1050

Reconsideration - Certification - Petition - Practice and Procedure - Timeliness - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely *prima facie* evidence of



<p>filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate</p> <p>P &amp; M ELECTRIC LIMITED, POMICO HOLDINGS INC., P &amp; M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES.....</p>	1053
<p>Related Employer - Judicial Review - Unfair Labour Practice - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, <i>inter alia</i>, the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court - Application for leave to appeal to the Court of Appeal dismissed</p> <p>G.P. CONSTRUCTION, 556631 ONTARIO LIMITED C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD .....</p>	1092
<p>Remedies - Intimidation and Coercion - Unfair Labour Practice - Employer leasing trucks from employees - Term of arrangement that employees having right to drive own truck - Owner/driver of truck sharing with spare driver - Owner/driver opposing memorandum of settlement favoured by spare driver and revoking spare driver's use of truck - Union seeking order that spare driver continue to drive truck - Injunctive relief inappropriate since loss of use of truck not result or effect of alleged breach - Complaint dismissed</p> <p>CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....</p>	1021
<p>Representation Vote - Certification - Practice and Procedure - Pre-Hearing Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot</p> <p>MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION.....</p>	1050
<p>Sale of a Business - Company acquiring lease, fixtures and leasehold improvements of former employer in retail food business - Union claiming successor rights - Board weighing factors including lengthy hiatus in operations, acquisition of lease and chattels through independent transactions, supply of employees from company's other stores - Application dismissed</p> <p>STEINBERG INC., MIRACLE FOOD MART DIVISION AND OSHAWA HOLDINGS LIMITED, C.O.B. AS DUTCH BOY FOODS; RE U.F.C.W., LOCALS 175 &amp; 633</p>	1066
<p>Security Guard - Certification - Natural Justice - Practice and Procedure - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem</p> <p>MCLEAN SECURITY, 445733 ONTARIO LTD. C.O.B. AS; RE U.S.W.A. ....</p>	1048
<p>Timeliness - Certification - Petition - Practice and Procedure - Reconsideration - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely <i>prima facie</i> evidence of</p>	

filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES.....

1064

Timeliness - Crown Transfer - Union seeking declaration of Crown transfer for forestry survey and spraying contracted out by Ministry - Subject matter of contracts constituting "undertaking" within meaning of *Successor Rights (Crown Transfers) Act* - Undertakings "transferred" by tendering process - Transferees constituting "employers" - Performance of work by Crown employees immediately prior to transfer not prerequisite - Nothing in *Successor Rights (Crown Transfers) Act* to suggest union delay in seeking declaration releasing employer from effect of collective agreement - Board declaring Crown transfer

DUNNING PAVING LIMITED, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, AND; RE O.P.S.E.U.; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF NATURAL RESOURCES, AND BARRY LIGHTFOOT; RE SMITH FORESTRY ENTERPRISES; RE HOTCHKISS FORESTRY ENTERPRISES; RE JOHN KNIGHT AND LORRAINE NORRIS C.O.B. AS AGASSIZ FORESTRY/ENVIRONMENTAL SERVICES; RE NICOL SEGUIN; RE JOHN MCCORMACK; RE ELSIE MCCORMACK; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES, AND WAYNE FORBES C.O.B. AS FORBES JANITORIAL SERVICES.....

1028

Unfair Labour Practice - Certification - Intimidation and Coercion - Reference to two-tiered union dues made by ordinary employee soliciting union membership - Reasonable employee not likely to be influenced by statements of fellow employee lacking power over union dues and engaged in partisan salesmanship - Employees having opportunity to seek clarification - Inaccurate statements in literature distributed by employer and union mere partisan salesmanship - Board refusing to discount membership evidence and certifying union

VENTURE INDUSTRIES CANADA LTD.; RE C.A.W.; RE GROUP OF EMPLOYEES.....

1074

Unfair Labour Practice - Intimidation and Coercion - Remedies - Employer leasing trucks from employees - Term of arrangement that employees having right to drive own truck - Owner/driver of truck sharing with spare driver - Owner/driver opposing memorandum of settlement favoured by spare driver and revoking spare driver's use of truck - Union seeking order that spare driver continue to drive truck - Injunctive relief inappropriate since loss of use of truck not result or effect of alleged breach - Complaint dismissed

CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....

1021

Unfair Labour Practice - Judicial Review - Related Employer - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, *inter alia*, the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court - Application for leave to appeal to the Court of Appeal dismissed

G.P. CONSTRUCTION, 556631 ONTARIO LIMITED C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD .....

1092





**0708-89-R** United Brotherhood of Carpenters and Joiners of America, Local 38, Applicant v. **Ameri-Cana Motel Limited** and 603185 Ontario Limited, Respondents

**Abandonment - Construction Industry - Union certified for predecessor company in 1972 - Predecessor company employing non-union labour for intermittent subsequent construction work - Union failing to take reasonable steps to monitor activity at fixed location of predecessor company - Board finding abandonment of bargaining rights - Union's related employer and sale of business applications for successor company dismissed**

**BEFORE:** *Michael Bendel*, Vice-Chair, and Board Members *R. W. Pirrie* and *P. V. Grasso*.

**APPEARANCES:** *David McKee* and *Arthur Varty* for the applicant; *B. W. Adams*, *N. DiBellonia* and *M. Glavcic* for the respondents.

**DECISION OF THE BOARD;** October 4, 1989

1. This is an application under section 63 of the *Labour Relations Act*, in which it is alleged that Ameri-Cana Motel Limited ("Ameri-Cana") sold its business to 603185 Ontario Limited ("the number company") and that, as a result, the number company is subject to the Carpenters' provincial agreement. Coupled with the application under section 63 of the Act was a request for a declaration under section 1(4) of the Act that the two corporations constituted one employer for the purposes of the Act.

2. The main issue in dispute between the parties is whether the applicant has abandoned its bargaining rights. In 1972, the applicant was certified by the Board as the bargaining agent for the carpenters and carpenters' apprentices employed by Ameri-Cana. At that time, Ameri-Cana was engaged in some construction work at its motel in Niagara Falls. According to the applicant, it was unaware of any further construction work being performed at the motel until 1989, when the number company, which had bought the business in 1985, undertook some construction activity. It claims that, despite the passage of 17 years, its bargaining rights have remained intact. The respondent corporations, on the other hand, allege that substantial construction work was in fact in progress throughout much of the 17-year period and that the applicant, through its inactivity, has abandoned its bargaining rights.

3. No evidence or argument was presented in support of the request for a declaration under section 1(4) of the Act.

4. In the course of his submissions, counsel for the applicant argued that there could not, as a matter of law, be any abandonment of bargaining rights following the introduction of province-wide bargaining in 1978. He referred to *Lorne's Electric*, [1987] OLRB Rep. Nov. 1405 in support of that submission. Counsel for the respondents gave us no reason to doubt this interpretation of the case law or its applicability to the facts of this case. As a result, the Board must inquire into the question whether the applicant had bargaining rights in respect of Ameri-Cana's employees immediately prior to the introduction of province-wide bargaining. If it had rights at that time, we accept the applicant's argument that it has retained them. We must therefore examine the evidence relating to the work performed by Ameri-Cana between 1972 and 1978, and the steps taken by the applicant to assert its bargaining rights during that period.

5. The principal of Ameri-Cana, Mike Glavcic, gave evidence on the different stages in the construction of the motel. In 1959-60, a motel consisting of ten rooms and a restaurant was

constructed. By 1971, it had been expanded to two adjacent single-storey buildings, with a 30 foot space between them, containing a total of some 42 rooms. Ameri-Cana planned to convert these two motels into a single, much larger hotel. Specifically, it planned to do the following:

- (a) to add a second storey, with additional rooms, to each of the buildings ("the first phase");
- (b) to close the space between the two buildings, part of which would become corridor space and part of which would permit the expansion of the existing rooms; to open doors from this corridor into each of the units and to close the outside doors to each of the ground floor units; and to remodel the units, with new bathrooms in the space adjoining the corridor ("the second phase"); and
- (c) to construct a further 36 units at the rear (the south) of the building ("the third phase").

6. The first phase of this expansion commenced sometime in 1971 and was largely completed by July 1973. The second phase began in late 1973 and was completed by the end of 1974. Construction on the third phase started late in 1974. After the first floor units on the third phase were completed, the municipal building department, it appears, imposed new fire separation requirements. This led to some uncertainty on the part of Mr. Glavcic about completing the third phase. Work stopped for about a year. The second floor on the third phase was eventually completed sometime in 1976.

7. In addition to these three major phases of expansion of the premises, improvements were being made, according to Mr. Glavcic, on a continuous basis throughout the relevant period. Inside and outside work was undertaken. The living quarters for the owner were also improved.

8. Mr. Glavcic had had some experience in the construction industry. He did not use the services of a general contractor and he performed some of the work personally. Carpentry work figured prominently in each of the three phases of the expansion of the premises. In the first phase, about three carpenters, as well as a couple of helpers, were employed. On the other phases, one or two carpenters were employed, and Mr. Glavcic did some carpentry work himself. He hired the carpenters and helpers through the Manpower Centre. He paid no particular attention to whether they were union members nor not.

9. The applicant was certified by the Board as bargaining agent for carpenters and carpenters' apprentices on December 5, 1972. Mr. Glavcic had only a vague recollection of the certification process. According to the Board's decision certifying the applicant,

6. In paragraph 13 of its Reply, the respondent has stated:

I am building an addition to motel. I have hired on a casual basis two carpenters who work only when called from time to time and also a helper on the same basis. Their work will be completed in a matter of a few days.

7. In paragraph 14(2) of its Reply, the respondent has consented to the application being disposed of by the Board without a hearing by the Board and has made the following representations thereon:

This doesn't seem to make any sense to me. I am not in the construction business and don't intend to be. When addition is complete I will have no need of any carpenter.

8. The fact that an employer hires employees on a casual basis and that their work will soon be finished has not been held by the Board to be a ground for denying certification to a trade union.



9. It appears from the material filed with the Board that although the general nature of the respondent's business is the operation of a seasonal motel, it has, nevertheless, entered the field of construction for the purpose of building an addition to its motel.

Mr. Glavcic could not state what work he might have had in mind when he made the reply attributed to him in the Board's decision; he could not even remember having made that reply. He could not recall being notified by the Board of its decision to certify the applicant. All that he could recall from this period was being summoned to a meeting at a local hotel by some government department, possibly the Ministry of Labour, in the fall, although he was not sure of the year. The union was represented at the meeting, as was the government department. He remembers being told that the union had signed up some members and that, if he hired non-union carpenters, there would be a strike. The meeting lasted about 30 or 45 minutes. It was not a formal hearing.

10. Mr. Glavcic testified that, apart from the meeting at the local hotel, he had no other contact that he could recall with the applicant. He engaged in no negotiations with the applicant. He signed no collective agreement. He remitted no dues to the applicant. He had no correspondence with the applicant. He had no visits from any officers or representatives of the applicant. When he sold the business to the number company, it did not occur to him to mention the applicant.

11. The applicant was not able to contradict any of Mr. Glavcic's evidence concerning contacts between the applicant and Ameri-Cana. Its business representative in the Niagara Falls area at the relevant time is now deceased. The applicant's existing records from that era contain no reference to Ameri-Cana (except for the certificate from the Board).

12. Extensive evidence was presented on the "visibility" of the work undertaken by Ameri-Cana. The front of the motel is on Lundy's Lane, Niagara Falls, which is Highway 20, a major artery in the area. Construction materials were delivered from Lundy's Lane, and materials piled in the parking lot could be seen from Lundy's Lane. The construction on the first two phases was apparent to guests at the motel, which remained open for business throughout most of the construction (except for its regular winter closing). Much of the construction work on the first two phases was also apparent to people passing along Lundy's Lane. There was no sign advertising the construction work, but the building permit was displayed. Only a small part of the third phase of the construction was visible from Lundy's Lane, but it could all be seen from Kalar Road, the road at the side and rear of the premises. Although current photographs of the view of the property from Kalar Road suggest that the view would have been obstructed by foliage for much of the year, Mr. Glavcic testified that, at the time of the construction of the third phase, the trees and bushes in question were newly planted and would not have obscured the view.

13. Evidence was presented on behalf of the applicant by Mr. Arthur Varty, its full-time business agent in the Niagara Falls area since 1977, about his practices in keeping track of the performance of work in respect of which it has bargaining rights. Mr. Varty stated that, upon being elected to his position in 1977, he went through the applicant's certificates and collective agreements, as well as its minutes, to determine the extent of its bargaining rights. In this way, he learned of the applicant's rights in respect of Ameri-Cana. In order to keep informed of construction activity within its jurisdiction, he attends meetings of the Building and Construction Trades Council and maintains contacts with people in the business, including other business agents. In the course of his travelling within the area, he varies his routes so as to check on possible construction activity. He testified that it was pointless for a business agent to just wander around in the hope of discovering previously unknown construction sites. The applicant has bargaining rights at three hotels or motels. The irregularity of construction work made it impractical, he stated, for him to visit these employers as a means of keeping himself informed of work being undertaken. He would

only visit these employers if he became aware of information suggesting that construction work was being carried on. He also testified that, on the occasions he had visited any of these employers, he had the distinct impression he was not welcome there. Mr. Varty testified that he learned a lot of his job as business agent from his predecessor, Mr. Hap Haig, who is now deceased, and that Mr. Haig's practices were essentially the same as his.

14. Mr. Varty testified that, despite travelling regularly on Highway 20, he was never aware of construction going on at the motel, until shortly before this application was brought. He could not say for sure whether Mr. Haig travelled along Highway 20. He acknowledged, however, that a lot of construction had taken place in the area of the motel in the past 17 years, including a major shopping centre just one block away. He asserted that there would rarely have been any reason for Mr. Haig or himself to travel along Kalar Road, from which, it seems, the construction of the third phase could have been seen.

15. Mr. Varty testified that the applicant's practice, prior to the advent of province-wide bargaining, had been to negotiate basically two collective agreements, with the same term, with two employer associations and to seek to bind all of the employers with which it had bargaining rights to one or other of them. The collective agreements were for the period from 1973 to 1975, and 1975 to 1977. These last agreements were extended for a year with the approach of provincial bargaining in 1978.

16. As the Board has held on many occasions, whether a bargaining agent has abandoned its bargaining rights is a question of fact. In *J. S. Mechanical*, [1979] OLRB Rep. Feb. 110, the Board reviewed the factors that might support a finding of abandonment:

5. In assessing the bargaining relationship between the union and the employer to determine whether or not a union has abandoned its bargaining rights, the Board considers various factors. Among other possible indicators, the Board looks to the length of the union's inactivity, whether it has made attempts to negotiate or renew a collective agreement, whether the union has sought to administer the collective agreement through the grievance and arbitration provisions in the collective agreement, whether terms and conditions of employment have been changed by the employer without objection from the union as well as whether there are any extenuating circumstances to explain an apparent failure to assert bargaining rights.

As this passage indicates, "extenuating circumstances" might exist to "explain an apparent failure to assert bargaining rights". The most obvious such circumstance is where the employer has been inactive in the relevant geographical area. The Board explained its approach to this element in *Barkman Builders Ltd.*, [1984] OLRB Rep. April 565:

10. The fact of inactivity, as in this case, does not in and of itself establish abandonment. (See *Inducon Construction (Northern) Inc.*, *supra* and the cases referred to therein.) In the construction industry an employer must be working within the geographic area for which the union holds bargaining rights and, especially where the bargaining rights are in respect of an area such as the District of Kenora, there must be a reasonable basis upon which to conclude that the union ought to have known that the employer was active. In this case we are satisfied that, with the exception of the mini-mall job, the union did not know that Barkman was active in the area nor, on the evidence, ought it to have known. We do not accept that the union was required to search all of the building permits issued in the area in respect of house renovations and cottage building. The Homestake job was a renovation that was not visible from the road and the apartment complex job was carried on under the name of Barkman's partner. We are satisfied that Mr. Sherman conducted himself in a manner designed to keep himself abreast of the work being carried on in the area and that he had no reasonable way of knowing that Barkman was active in the area.

11. We concur with the statement made by the Board at paragraph 13 of the *Inducon* case, *supra* that a "trade union is not required to perform academic exercises with an employer in the

construction industry in order to represent non-existent employees.” Although there were employees in this case the union had no knowledge of them and, as we have found, there is no reasonable basis upon which it ought to have known. In these circumstances, there was no requirement upon the union to file for conciliation services and push for a “no-board” report. The failure of the union to do so or to otherwise actively pursue its bargaining rights therefore does not support a finding of abandonment.

17. The evidence, although somewhat vague, suggests that the applicant became certified after the first phase of construction had been largely completed. During this phase, Ameri-Cana employed three carpenters and a couple of helpers. The applicant must have been aware of that phase of the construction, which led it to seek certification. We are prepared to accept that the applicant had no actual knowledge of the subsequent phases of construction at the motel. The question we have to consider is whether there was some reasonable basis upon which it ought to have known.

18. Both parties sought to draw support for their positions from the fact that this employer’s main business was the operation of a motel. The applicant says that construction work was not being performed with sufficient regularity to warrant efforts on its part to maintain contacts with this employer. The number company says that this was a “fixed” employer, in the sense that, unlike the vast majority of employers in the construction industry, it operated from a single fixed location, which made it easy for the applicant to keep abreast of any construction work being performed. We share the number company’s perspective on this question. As the Board stated in *Barkman Builders Ltd.*, *supra*, the question is whether the business agent “conducted himself in a manner designed to keep himself abreast of the work being carried on in the area and [whether] he had ... [any] reasonable way of knowing that [the employer] was active in the area”. When a construction union becomes certified as bargaining agent for employees of an employer whose main business is not construction, it seems to us that it cannot reasonably follow the same approach to ensuring that its bargaining rights are respected as it does in the case of employers whose principal business is construction. On the one hand, its traditional means of learning whether the employer is active within its geographical area - e.g. maintaining contact with other business agents; attending meetings of the local building and construction trades council; looking for signage; monitoring bidding and sub-contracting through trade newspapers - are less likely to bear fruit. On the other hand, there exists a very simple way for the applicant to learn of construction activity by the “fixed” employer, namely through visiting its premises. We are not persuaded that it would have been onerous or impractical for the business agent to have periodically attended at the motel or driven past the motel to see if there was any evidence of construction work. We are satisfied that if the applicant’s business agent had visited the premises periodically between 1973 and 1977 or even if he had made a point of driving by the premises periodically, he could not have failed to become aware of Ameri-Cana’s ongoing expansion of its motel.

19. We are not called upon to pinpoint the moment at which the applicant must be taken to have abandoned its bargaining rights. We are satisfied, however, that it failed to take reasonable steps to ensure that its bargaining rights were honoured throughout the period from 1973 to 1977. We find that, prior to the introduction of province-wide bargaining in 1978, the applicant had abandoned its bargaining rights for Ameri-Cana’s employees.

20. This application is dismissed.

---



**3179-88-G** International Union of Bricklayers and Allied Craftsmen and The Ontario Provincial Conference of The International Union of Bricklayers and Allied Craftsmen, Applicant v. **Calligaro Tile Company Limited**, Respondent

Construction Industry - Construction Industry Grievance - Employer failing to make proper income tax deductions from employee wages - Employer making deductions at later date - Union alleging breach of collective agreement and of *Employment Standards Act* prohibition against wage set-off - Collective agreement authorizing income tax deductions - Overpayment not "wages" within meaning of *Employment Standards Act* - Grievance dismissed

**BEFORE:** *R. A. Furness*, Vice-Chair, and Board Members *W. Gibson* and *J. Redshaw*.

**APPEARANCES:** *Elizabeth Mitchell* and *Bill Hanza* for the applicant; *R. M. Parry* and *Armando Pompeo* for the respondent.

**DECISION OF THE BOARD;** October 10, 1989

1. The applicant has referred a grievance concerning the interpretation, application, administration or alleged violation of a collective agreement to the Board for final and binding determination.

2. The applicant has grieved, on its own behalf and on behalf of all past and present employees of the respondent, that the respondent has violated a collective agreement and, in particular, without limiting the generality of the foregoing, articles 22 and 29(a) thereof, in that the respondent has failed to pay its employees proper wages. It is the position of the applicant that the respondent has made unauthorized set-offs as against its employees' wages on account of income tax liabilities incurred by the respondent. It is also the position of the applicant that unauthorized set-offs were made as against the following employees during the months of December, 1988, January, 1989, and February 1989:

<u>Name of Employee</u>	<u>Unauthorized Set-off Deducted</u>
G. Cester	\$271.20
B. DiVincenzo	\$614.72
R. Dupont	\$280.80
S. Fiegelson	\$355.73
S. Gironda	\$553.52
B. Gould	\$155.84
J. Lucchese	\$473.65
J. Lynch	\$208.40
O. Manicone	\$722.82
Q. Massaro	\$425.99
R. Melis	\$451.52
R. Pivato	\$363.05
N. Pivato	\$460.23
R. Reynolds	\$557.22
V. Scandiffio	\$591.40
E. Santarossa	\$167.42
G. Wood	\$204.02
B. Masut	\$113.62

3. At the commencement of the hearing, counsel for the applicant advised the Board that some of the employees no longer work for the respondent and it was dropping the grievances with respect to these six former employees, namely, R. Dupont, S. Gironda, B. Gould, N. Pivato, E. Santarossa and G. Wood. Accordingly, this referral is dismissed with respect to these six former employees of the respondent.

4. Counsel for the respondent informed the Board that deductions were not made from S. Fiegelson and J. Lynch because they actually paid the respondent directly. However, counsel for the applicant informed the Board that the applicant was still grieving with respect to Messrs. Fiegelson and Lynch. During the course of the hearing, counsel for the applicant discovered that Messrs. Fiegelson and Lynch were no longer employees of the respondent. Counsel for the applicant stated that the applicant no longer grieved on behalf of these two former employees. In these circumstances, the referral with respect to Messrs. Fiegelson and Lynch is dismissed.

5. This grievance was therefore entertained by the Board with respect to the following ten persons: G. Cester, B. DiVincenzo, J. Lucchese, O. Manicone, Q. Massaro, R. Melis, R. Pivato, R. Reynolds, V. Scandiffio and B. Masut.

6. The parties placed before the Board a written statement of agreed facts. In addition, the Board heard evidence from the following persons: Renato Pivato, a terrazzo mechanic; Bill Hanza, the business representative of the International Union of Bricklayers and Allied Craftsmen, Marble, Tile & Terrazzo Union, Local 31; and Luciano Calligaro, the president of the respondent.

7. The agreed facts, which were placed before the Board, read as follows:

OLRB File #3179-88-G

Agreed Facts

1. In October 1988, the Respondent was audited by Revenue Canada. The auditor was Mr. Howard Balboolall ("Balboolall").
2. As a result of the audit, Mr. Balboolall informed the Respondent that it had failed to make proper remittances under the *Income Tax Act*. Among other things, the Respondent had failed to include travel allowances paid to its employees in 1986 and 1987 as part of their taxable income in those taxation years. Balboolall prepared amended T4 forms for each employee reflecting the additional 1986 and 1987 income. (T4 Supplementary Forms - attached as Exhibit 1 hereto.)
3. Balboolall suggested as settlement either:
  - (i) the Respondent could pay a penalty and Revenue Canada would proceed against the individual employees;
  - or (ii) the Respondent could pay estimated taxes on the income shown in the T4 Supplementary forms and hope to collect these amounts from the individual employees.
4. Some days later the Respondent contacted Balboolall and the Respondent and Balboolall had a further meeting. At that time, the Respondent advised Balboolall that it had decided to pay the estimated taxes owing on behalf of its employees. The Respondent submitted a cheque for \$14,860.38 to Balboolall of which \$6,971.15 was attributable to taxes owing on the T4 Supplementary Forms. (Cheque is attached as Exhibit 2A. Covering letter to Balboolall is attached as Exhibit 2).

5. The estimated taxes for each employee were calculated as 30% of the additional income shown in the T4 Supplementary Forms, a rate agreed between the Respondent and Balboolall.
6. The employees received a letter dated November 28, 1988, in their pay envelopes indicating the payment made to Revenue Canada and showing the calculation of the estimated tax. (Letter of Nov. 28, 1988, is attached as Exhibit 3 hereto).
7. Two employees submitted cheques for the full amount they had been assessed. Beginning in January, 1989, deductions were made from the pay cheques of the employees who continued in the respondent's employ, as shown in "Re: Tax Paid on Behalf of Employees" (Exhibit 4, attached).
8. At no time were there any discussions between the Respondent and the Union regarding the fact of the payment to Revenue Canada nor regarding the repayment of the amounts assessed.
9. The Union filed a grievance on March 7, 1989. Subsequently, the Respondent delivered a letter dated April 4, 1989, explaining the transaction to the Union. (Letter of April 4, 1989, attached as Exhibit 5).

8. The Provincial collective agreement between The International Union of Bricklayers and Allied Craftsmen and The Ontario Provincial Conference of The International Union of Bricklayers and Allied Craftsmen and The Terrazzo, Tile and Marble Guild of Ontario Inc., made on May 1, 1988, and expiring on April 30, 1990, provides in articles 22, as follows:

**ARTICLE 22**  
**Payment of Wages**

(a) Payment of Wages shall be made not later than Thursday of each week on the jobsite during working hours, by cash or cheque, or other negotiable instrument. Time books to be closed weekly and the Thursday Pay Day must be within four (4) working days of the closing time of the books.

(b) Accompanying the Pay, the Employer shall provide a Statement for each Employee showing the Company Name, the Employee's Name, the Date of the Pay Period, the number of hours worked, the rate per hour, the Gross Pay, Travelling Expenses, Vacation Pay, Board Allowance, Income Tax Deductions, Unemployment Deductions, Canada Pension Plan Deductions, and any other miscellaneous Deductions or Contributions and Net Pay.

Article 29(a) which is entitled "Wages, Deductions, Contributions" refers to various local trade unions. With respect to Local 31, a table provides for hourly wage rate, ten per cent vacation pay, international union dues, local dues, industry promotion, Ontario Provincial Council deduction, local pension, welfare, dental, total wage package and employer contribution effective on May 9, 1988 and May 1, 1989, for marble mason, terrazzo tile mechanic, base machine operator, terrazzo helper and marble tile helper.

9. In the course of argument counsel referred to sections 1(p), 7(1) and 8 of the *Employment Standards Act* R.S.O. c. 137 as amended, and to R.R.O. 1980, Reg. 285, s.15 and R.R.O. 1980, Reg. 286, s.13, being regulations under that Act. These provisions provide as follows:

1. In this Act,

- (p) "wages" means any monetary remuneration payable by an employer to an employee under the terms of a contract of employment, oral or written, express or implied, any payment to be made by an employer to an employee under this Act, and any allow-



ances for room or board as prescribed in the regulations or under an agreement or arrangement therefore but does not include,

- (i) tips and other gratuities,
- (ii) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and are not related to hours, production or efficiency,
- (iii) travelling allowances or expenses,
- (iv) contributions made by any employer to a fund, plan or arrangement to which Part X of this Act applies.

7.-(1) An employer shall pay to an employee all wages to which an employee is entitled under,

- (a) an employment standard; or
- (b) a right, benefit, term or condition of employment under a contract of employment, oral or written, express or implied, that prevails over an employment standard,

in cash or by cheque.

8. Except as permitted by the regulations, no employer shall claim a set-off against wages, make a claim against wages for liquidated or unliquidated damages or retain, cause to be returned to himself, or accept, directly or indirectly, any wages payable to an employee.

#### Regulations

15.-(1) Notwithstanding section 8 of the Act, an employer may set off against, deduct from, claim or make a claim against or retain or accept the wages of an employee where,

- (a) a statute so provides;
- (b) an order or judgment of a court so requires; or
- (c) subject to subsection (2), a written authorization of the employee so permits or directs.

(2) No written authorization of an employee shall entitle an employer to set off against, deduct from, retain, claim or accept wages for faulty workmanship, or for cash shortages or loss of property of the employer where a person other than the employee has access to the cash or property.

(3) Where an employee has been given or paid a vacation with pay or payment for vacation in excess of the requirements of Part VIII of the Act, no employer shall set off or deduct such excess against or from any vacation with pay, pay for vacation, or payment under section 31 of the Act.

13.-(1) For the purposes of subsections 40(6) and (7) of the Act and of section 12 of this Regulation, the employer shall not make any deduction from the amounts to be paid thereunder except a deduction,

- (a) required to be made pursuant to a statute;
- (b) subject to subsection (2), expressly authorized in writing by the person or his agent; or
- (c) pursuant to an order or judgment of a court.

(2) An authorization in writing which permits a deduction from the said amounts for,

- (a) cash shortages where two or more persons have access to the cash;
- (b) losses due to faulty workmanship; or
- (c) the value of property stolen from the person,

is null and void.

10. The letter sent by the respondent to Renato Pivato dated November 28, 1988, is similar in form, with differences only with respect to the calculation of the amounts owing, to the letters sent to other employees who owed money with respect to income tax and provides as follows:

Dear Renato:

We recently underwent a Payroll Audit and unfortunately they picked up the travel allowances you were paid in 1986 and 1987.

Because of this, you were re-assessed. (Copies of the amended T-4 is attached). 30% of this amount was owing to the Government of Canada.

We have paid this amount on your behalf. (Copy of letter to Revenue Canada attached).

We now have to recover this amount from you - as shown below.

<u>1986</u>	<u>1987</u>
$\$883.10 \times 30\% = \$264.93$	$\$327.08 \times 30\% = \$98.12$
<u>Total</u>	
\$363.05	

Would you be kind enough to contact the office regarding reimbursement as soon as possible.

Yours truly,

CALLIGARO TILE CO. LTD.

"A. Pompeo"  
A. Pompeo  
Vice President.

11. There were discrepancies in the evidence of Renato Pivato and Luciano Calligaro. The latter impressed the Board as being clear in his recollection of the relevant events. Mr. Pivato, on the other hand, was not always responsive to the questions put to him and appeared to have a less clear recollection for the relevant events. Mr. Pivato appeared to agree with the impugned conduct of the respondent when he stated: "I agreed with the deductions in a way - when you have to pay you have to pay." Where there is conflict in the evidence between these two witnesses, the Board accepts the evidence of Mr. Calligaro in preference to the evidence of Mr. Pivato.

12. Mr. Calligaro explained the agreement reached with Revenue Canada in a series of *ad hoc* meetings with the employees on the list affected by the agreement. He explained to the best of his ability what had happened. It was unlikely that Mr. Calligaro missed any of the employees. However, in the event that his happened, his secretary spoke to any such employees. There was general agreement in principle to deduct the money owing by deductions from the payroll. No one disputed the liability and the employees understood why they were liable to pay the income tax although Mr. Calligaro had difficulty in explaining why money earned two to three years ago was taxable. He asked the current employees either to pay at once or over a period of time and told them that if they failed to pay he would sue and claim interest and costs. He explained that such a

method would also cause them to lose working time. The response of the employees Mr. Calligaro spoke to was that it was close to Christmas and they offered to work extra hours. Eventually, as was stated earlier, there was general agreement in principle to deduct the money owing by deductions from the payroll. He informed his secretary of the agreement and left it to her with the proviso that the deductions should be made over a period of time and that if there was contact with employees she was to accommodate employees as best she could. In fact, the deductions from the payroll commenced in January of 1989 (with one exception) for those employees who had not reimbursed the respondent by a lump sum payment in either December of 1988 or January of 1989.

13. The deductions from payroll were completed with the pay for the week ending February 18, 1989. From an inspection of the staggering of the time and amount of deductions, it appears that the secretary may have accommodated the employees. None of the employees have disputed the amount of or the liability to pay income tax. None of the employees were asked by the respondent to sign a form authorizing the deductions from their pay cheques and none of them signed such a form. Between October of 1988 and January of 1989 the respondent did not discuss this grievance with the applicant.

14. It was the position of the applicant that the conduct of the respondent in making the deductions from payroll had violated articles 22 and 29(a) of the collective agreement. It was also the position of the applicant that under the *Employment Standards Act* the respondent was not, in the circumstances, authorized to make a set off against the wages of the ten persons referred to in paragraph five. It was the position of the respondent that it had not violated the collective agreement and was not, in the circumstances, required to have a written authorization in order to make the deductions from payroll. The Board will consider the conduct of the parties under the collective agreement and will then examine the effect of the *Employment Standards Act* on the deductions from payroll.

15. It was not argued that the respondent had specifically violated article 22(a) of the collective agreement. It appears that the respondent paid wages by cheque each week and there was no suggestion that the respondent was late in the payment of wages. With respect to article 22(b), there was no suggestion that the required statements with the cheques did not contain the information required therein. Article 22(b) contemplates the indication, *inter alia*, of "income tax deductions" and other deductions which are payable to the Federal government. There is clearly no time limitation with respect to "income tax deductions". The only requirement is the provision for the indication of such a deduction. It was suggested by counsel for the applicant that a delay of two or three weeks in the deduction of the correct amount of income tax was permissible as opposed to the two to three years in the facts of this referral. There is nothing in the language of article 22 which even remotely suggests an inference of such an interpretation. Article 29(a) with respect to all named local trade unions, including the applicant, merely provides a table for hourly wage rate, ten per cent vacation pay, international union dues, local dues, industry promotion, Ontario Provincial Council deduction, local pension, welfare, dental, total wage package and employer contribution effective on May 9, 1988 and May 1, 1989, for marble mason, terrazzo tile mechanic, base machine operator, terrazzo helper and marble tile helper. There is no allegation that the respondent failed to pay the stipulated hourly wage rate and the vacation pay of ten per cent together with agreed contributions and deductions.

16. The Board was referred to cases which considered the circumstances of a deductions from wages and deductions for income tax from wages under the provisions of the *Employment Standards Act*. In *All-Way Transportation Services Ltd.*, June 6, 1979 (Brent) E.S.C. 627, the referee in considering the effect of section 8 of that Act and section 15(1) of the Regulations stated, in granting the application for review:



7. If this were simply a case where the applicant was claiming a set-off against wages owed for its claim on account of gasoline used by the employee in the course of using the van for his personal use, then I would have to dismiss the application for review in the absence of a court order or written authorization made by the respondent. In the instant case, though, I am satisfied that there was an overpayment of wages to the respondent and that this overpayment exceeds the amount deducted from the respondent's cheque. The respondent was accordingly never entitled to the amount which the applicant deducted from his final cheque and the amount cannot be regarded as wages payable to the respondent within section 8 of the Act.

In that decision the referee accepted the concept that an employee was never entitled to the amount which the employer deducted from his final cheque and that the amount could not be regarded as wages payable to the employee within the meaning of section 8 of that Act. Also in *Re Toronto Western Hospital*, August 19, 1980 (Adamson) E.S.C. 841, the referee made a distinction between recovery of wage overpayments and "a set-off against wages" and determined that section 8 has no application in respect of recovery of wage overpayments. At page 6 the referee stated:

The Act is concerned with ensuring that employees receive "any wages payable" to them and clearly not concerned with preventing the recovery of monies which have inadvertently been paid to the employee in error. The exceptions under Section 803, Section 14 simply provide for statutory deductions, those authorized by court order and by the individual personally. I find the application of Section 8 to refer to an employer's attempt to recover through payroll, amounts unrelated to wages. Recovery of wage overpayments can hardly be classed as "a set-off against wages" if the employee's earnings after the recovery are those wages which had been agreed upon. Therefore I find that Section 8 has no application in respect of recovery of wage overpayments.

Similarly in *Re Joshua Parker, c.o.b. as Top Brass*, March 16, 1983 (Swan) E.S.C. 1539, the referee stated at page 9 as follows:

The question therefore arises as to the status of the deductions found owing to Revenue Canada and actually paid by the Employer. These sums have been paid by the Employer in respect of the complainant's income tax liability, and it therefore seems to me to be equitable that the Employer should be entitled to set-off the sums paid against any sum of money which may now be owing to the complainant. Section 8 of the Act provides that no set-off may be claimed against wages except as permitted by the regulations, and section 15(1)(a) of Regulation 285 provides that a set-off may be claimed where a statute so provides. This, in my view, is a case of a set-off which can properly be claimed against wages owing, and I therefore determine that the Employer is entitled to set-off against any amounts for which he may be found liable all sums paid on behalf of the complainant to Revenue Canada.

17. Section 15(1) of the Regulations also provides that, notwithstanding section 8 of the *Employment Standards Act*, an employer may set-off against, deduct from, claim or make a claim against or retain or accept the wages of an employee where a statute so provides. There was no dispute that the *Income Tax Act* S.C. 1970-71-72, c. 63, as amended, and regulations thereunder provide for and require the deduction of the income of these employees at source by the respondent. The applicant argued that the respondent had violated certain sections of the federal statute. Such arguments are more appropriately raised before another forum. Section 13 of the Regulations which was referred to by the applicant has no application to the facts of the referral because we are not dealing with a termination of employment.

18. In our view, there is no doubt that the respondent, by not deducting the required amount of income tax initially from the employees, caused those employees to receive a portion of their wages to which they were not entitled. Such a portion of their wages cannot be regarded as wages within the meaning of sections 1(p), 7(1) and 8 of the *Employment Standards Act* and section 15(1) of the Regulations. The Board finds that the respondent has not contravened either the provisions of section 8 of the Act or the provisions of section 15 of the Regulations. A written

authorization by the affected employees was not required. The Board also notes that in any event even if the conduct of the respondent could be construed as a set-off against wages, the set-off would have been where a statute so provides. See the *Income Tax Act*.

19. In the result, the Board finds that the respondent has neither violated the collective agreement (particularly articles 22 and 29(a) thereof) nor contravened the *Employment Standards Act*. This grievance is accordingly dismissed.

## **2382-88-U Energy and Chemical Workers Union, Complainant v. G. Lemaire and Chinook Chemicals Company, Respondent**

**Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer leasing trucks from employees - Term of arrangement that employees having right to drive own truck - Owner/driver of truck sharing with spare driver - Owner/driver opposing memorandum of settlement favoured by spare driver and revoking spare driver's use of truck - Union seeking order that spare driver continue to drive truck - Injunctive relief inappropriate since loss of use of truck not result or effect of alleged breach - Complaint dismissed**

**BEFORE:** *Owen V. Gray*, Vice-Chair, and Board Members *W. A. Correll* and *C. McDonald*.

**APPEARANCES:** *Daniel Ublansky* and *David Pretty* for the complainant; *Ian Werker* for G. Lemaire; *Thomas Beveridge* for Chinook Chemicals Company.

**DECISION OF THE BOARD;** October 6, 1989

1. From August 1986 until December 1988, Jean Bourgon was employed by Chinook Chemicals Company ("Chinook") to drive a truck which it leased from Gilles Lemaire. Mr. Lemaire also drove the truck for Chinook during that period, but most of the driving was done by Mr. Bourgon. In December 1988, Lemaire took over the driving his truck for Chinook full time, to the exclusion of Mr. Bourgon. On Mr. Bourgon's behalf, the complainant trade union complains that he has been and continues to be deprived of employment by Mr. Lemaire and Chinook contrary to sections 64, 66(c) and 70 of the *Labour Relations Act* ("the Act").

2. Chinook operates a fleet of eleven highway trucks hauling raw materials to and delivering finished product from its plant in Sombra, Ontario near Sarnia. All eleven of the trucks are leased from the individuals who own them. Chinook employs the owners to drive the vehicles. One of these trucks hauls acid from the Cornwall area to the Sombra plant and returns with loads of product destined for locations in Eastern Ontario. Mr. Lemaire lives in the Cornwall area. Chinook has employed him to drive this "acid run" since November 1980; since then, the vehicle used for the acid run has been a tank truck owned by Mr. Lemaire. The evidence put before us did not address the specific nature of Mr. Lemaire's relationship with Chinook during the early years. When the complainant trade union became certified as bargaining agent for long haul truck drivers of Chinook in September 1987, Chinook was party to a written lease with each of its owner-drivers pursuant to which Chinook had exclusive use of the owner-driver's vehicle and, on the face of it, the exclusive right to determine who would drive that vehicle. Except in the case of Mr. Lemaire and his vehicle, the situation at that time was that each vehicle's owner was its usual driver.

3. In 1986, Mr. Lemaire decided, for personal reasons, to cut down on the amount of driving he was doing. He determined to get a "spare driver" for the tank truck used in Chinook's acid run. After unsatisfactory experience with another individual, he found Mr. Bourgon and started using him as a spare driver. This caused some initial difficulty with Chinook, since Mr. Lemaire had not consulted Chinook in advance about the use of Mr. Bourgon as a spare driver on the truck Mr. Lemaire leased to Chinook. Mr. Bourgon proved to be a satisfactory driver, however, and he was put on the Chinook payroll a short time after he started driving its acid run. As was the case with the owner-drivers and the spare driver or drivers who occasionally drove the other ten trucks in its fleet, Chinook paid Mr. Bourgon wages calculated periodically according to the distance he drove and provided him with certain additional employment benefits.

4. From the start, Mr. Bourgon wanted to drive as many runs as he could. Mr. Lemaire, who owned other vehicles which were leased to other companies, was content to have Mr. Bourgon take most of the acid runs. Except during periods like the 1987 Christmas season, when Mr. Lemaire took all or majority of the runs himself in order to increase his cash flow, Mr. Bourgon did take a majority of the runs. In 1987, for example, Mr. Bourgon drove the truck one hundred and forty thousand miles; Mr. Lemaire drove it forty thousand miles in that year.

5. The complainant trade union was certified as bargaining agent for long haul truck drivers of the respondent Chinook on September 30, 1987. Although it had not previously felt the need to focus closely on the nature of its relationship with its owner-drivers and spare drivers, Chinook concluded that all of them were employees. Chinook and the complainant agreed on a single bargaining unit containing all such drivers, without regard to whether they owned the vehicle they drove. That is the unit for which the complainant was certified. During bargaining, the complainant took the position (in which Chinook ultimately acquiesced) that it was the exclusive bargaining agent for all drivers for the purpose of negotiating a collective agreement and of all owner-drivers for the purpose of negotiating the terms of the leases of their vehicles to Chinook.

6. The ensuing collective bargaining did not immediately bear fruit. The Minister issued a "no board" report on October 21, 1988. On November 3, 1988, the complainant union applied under section 40a of the Act for a direction that the first contract be settled by arbitration. A termination application was filed by Mr. Lemaire's brother-in-law shortly thereafter. In the meantime, further bargaining resulted in a memorandum of agreement, which was placed before the employees at a ratification meeting on November 19, 1988.

7. One of the features of this tentative agreement which was of considerable significance to both Mr. Bourgon and Mr. Lemaire concerned demurrage. Demurrage is a payment made by Chinook to the owners of the trucks it leases in respect of time during which the truck is being loaded or unloaded and cannot, therefore, be on the road. The payment of demurrage was part of the existing arrangement between Chinook and the truck owners at the time the memorandum of agreement was negotiated. There was no existing arrangement to compensate the truck driver for the time he spent waiting for a truck to be loaded or unloaded. The memorandum of agreement made provision for a payment to drivers for this delay time, but there was to be a corresponding reduction in the truck leases of the demurrage charges paid to truck owners. This was not as major an issue for those involved in other runs as it was for Mr. Bourgon and Lemaire. The other runs did not involve as much delay time as the acid run and most of the driving on those runs was done by the owners of the trucks; at the time of certification, there were only one or two other spare drivers for all the trucks other than Mr. Lemaire's. The issue was a major one for Messrs. Lemaire and Bourgon, because there was substantial delay time on the acid run and most of the runs were being driven by the spare driver, Mr. Bourgon.



8. There was a very substantial adverse cost to Mr. Lemaire if the tentative agreement came into effect. His 1988 income from Chinook would have been many thousands of dollars less under its terms. Naturally, he opposed it. There was a point during the meeting of November 19, 1988 at which it appeared the proposed agreement had been ratified. Mr. Bourgon testified that at that point Mr. Lemaire was upset and "mentioned to me that if I had voted against him it would have been better for me to stay home." In the end, however, the agreement was not ratified that day.

9. Some time before this, in the spring of 1988, Mr. Lemaire had decided that he would like to go back to driving the acid run full time. He ordered a new truck with that in mind. He told Mr. Bourgon of his plan, and offered to sell him the old truck so that Mr. Bourgon could seek similar work with another company. Mr. Bourgon did not pursue that. Mr. Lemaire's plan had been to return to driving the acid run when the new truck arrived in late spring or early summer. Mr. Bourgon asked for the opportunity to drive the acid run for a while longer. Mr. Lemaire deferred his return to driving the acid run; Mr. Bourgon continued to drive most of the acid runs until late December.

10. On December 18, 1988, Mr. Lemaire met Mr. Bourgon and asked how he had voted at the November ratification meeting. Bourgon answered that what was in proposed contract was very good for him and that he had voted for the union. According to Mr. Bourgon, at the end of a short discussion Mr. Lemaire said that there would not be any "reprimand or bad feelings", that he understood and that each of them would do what was best for him. At that point, Mr. Lemaire took the truck in order to deal with an issue over some repairs it required.

11. On December 23, 1988, Mr. Lemaire telephoned Mr. Bourgon and told him he had decided that he would thereafter drive the truck himself. Mr. Bourgon says that Mr. Lemaire then told him that if the union did not win the January vote, it was possible he (Bourgon) would get the truck back, but if the union did win, he (Lemaire) was going to continue driving it himself. Mr. Lemaire's denial that he said this is not convincing.

12. In the meantime, there had been further termination proceedings, which were resolved on the basis that a vote would be held in early January at which bargaining unit employees would have a choice between ratifying the November memorandum of agreement and terminating the union's bargaining rights.

13. There was a further telephone conversation between Messrs. Lemaire and Bourgon on or about December 30, 1988, during which they discussed whether Mr. Bourgon could get the company to pay him for his waiting time if the union was voted out. This was in the context of Mr. Lemaire's explaining to Bourgon that the waiting time provided for in the memorandum of agreement would effectively come out of Lemaire's pocket, not Chinook's.

14. The union won the January vote; the tentative collective agreement came into effect. Mr. Lemaire continued to drive his new truck on the acid run.

15. Chinook's management had understood for some time that Mr. Lemaire would be taking over the driving of his truck on the acid run at some point. Nevertheless, it appears they were uneasy about the circumstances in which this occurred, since they asked Mr. Lemaire to give them a letter explaining why he had done so. Duncan Hockin testified that Chinook felt Lemaire was entitled to resume driving his own truck. Although the terms of the written lease between Chinook and its owner-drivers gave Chinook total control over who would drive the vehicle, Mr. Hockin testified that it had been part of Chinook's understanding with its owner-drivers since before the union was certified that a truck's owner had the right to be its driver if he wished. Because of that,

Chinook had not felt it could interfere with Mr. Lemaire's having taken over the driving of his truck. Although it could not guarantee any particular level of work, it did offer to give Bourgon such work as came available for a spare driver on other trucks in its fleet. This was similar to an offer Chinook had made to Bourgon a year earlier, when Mr. Lemaire had taken over driving his truck during the Christmas season. As he had then, Mr. Bourgon turned the offer down, as it would have involved his moving from Cornwall to Sarnia without any guarantee of work.

16. The sections of the *Labour Relations Act* on which the complainant relies are these:

64. *No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence.*

66. *No employer, employers' organization or person acting on behalf of an employer or an employers' organization,*

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;

• • •

- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

70. *No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.*

[emphasis added]

17. The complainant acknowledges that Mr. Lemaire is not an "employer" or "person acting on behalf of an employer" within the meaning of sections 64 and 66 and, so, cannot be in breach of either of those sections. Chinook was Mr. Bourgon's employer at all relevant times. The union argues that Chinook knew Mr. Lemaire took the truck away from Mr. Bourgon because he had voted and was expected to vote in favour of the union. It says Chinook could have done something about that. By choosing not to do anything about it, it argues, Chinook violated sections 64 and 66.

18. Because it does not appear in the form of lease used by Chinook or in any other document, the union invites us to discount Mr. Hockin's assertion that it was part of Chinook's relationship with its drivers that a vehicle's owner had a right or privilege to be its driver. The fact that this right or privilege is not recorded in a document is not the end of the matter; an oral agreement to that effect would be perfectly proper and not inconsistent with anything in the lease. The real question is whether we believe Mr. Hockin's testimony in this regard. We do.

19. One of the observations made on Chinook's behalf was that Mr. Lemaire had more seniority than Mr. Bourgon and that the collective agreement negotiated with the complainant rec-

ognized the principle that seniority should determine the allocation of work. The complainant argued that Mr. Bourgon had a special right under the “dispatching procedures” article of the collective agreement to continue driving the acid run for a period of time notwithstanding his lack of seniority because the acid run is a “dedicated account”. There are other portions of the “dispatching procedures” article which suggest that Mr. Bourgon, as a “spare driver”, did not have any claim to the acid run which takes preference over Mr. Lemaire’s claim. It is not clear that any of these provisions can apply to changes in dispatching which occurred prior to the January ratification of the collective agreement. Apparently no grievance was pursued to arbitration or even filed under the collective agreement on this theory that Mr. Bourgon was entitled under the agreement to be dispatched on the acid run. That was the appropriate forum in which to pursue that argument.

20. For the purpose of assessing the complainant’s claim that Chinook violated sections 64 and 66 of the *Labour Relations Act*, we assume that what Mr. Lemaire did would have constituted a breach by him of those sections if he were an employer or person acting on behalf of an employer. He was neither, however. He was not acting on behalf of Chinook; Chinook did not cause or invite or suggest that Lemaire do as he did. It acquiesced in his having resumed the role of full-time driver of the truck he owned because it reasonably believed that he had the right to do so, whatever may have motivated him to exercise that right. There is no evidence, and no suggestion, that Chinook’s acquiescence was to any extent motivated by a desire to interfere with the trade union or discriminate against Mr. Bourgon as a result of or in anticipation of his exercise of rights under the *Labour Relations Act*. We find no violation of that Act by Chinook.

21. The complainant concedes that Mr. Lemaire cannot have breached either section 64 or section 66 because he is not an employer or a person acting on behalf of an employer. While sections 64 and 66 could not apply to Mr. Lemaire, section 70 could. The complainant says Mr. Lemaire violated section 70 when in November and December 1988 he made remarks linking the possibility of a pro-union vote result with adverse consequences for Mr. Bourgon.

22. One of the themes of Mr. Lemaire’s evidence and of the argument presented on his behalf was that Mr. Lemaire’s assumption of the role of full-time driver on the acid run was the inevitable consequence of plans which had been put in place long before there was any reason or occasion to intimidate or coerce Mr. Bourgon or anyone else with respect to the exercise of rights under the *Labour Relations Act*. While the evidence supports the proposition that Mr. Lemaire planned to resume driving on the acid run full-time, it does not persuade us that the plan was irrevocable or that the timing of implementation was unalterable. More than once prior to December 1988, Mr. Lemaire was prepared to and did, for whatever reason, delay this inevitable event. Although he denies it, we find that when he took over driving the truck in late December 1988, he did tell Mr. Bourgon that he might get back on the truck if the union lost the January ratification/termination vote. He certainly was not telling Mr. Bourgon that the change was inevitable.

23. When he and Mr. Bourgon had the discussions on which the complaint against him focuses, it would have been clear to Mr. Lemaire, if not also to Mr. Bourgon, that implementation of the proposed collective agreement would radically change for Mr. Lemaire the economics of his decision whether to drive his truck himself or not. If the agreement were ratified, its terms would create a powerful incentive for Mr. Lemaire to drive the truck himself, and a corresponding unlikelihood that there would be any further opportunity for Mr. Bourgon to drive it. The comment Mr. Lemaire made to Mr. Bourgon on the occasion in late December could be seen as a simple explanation of this logic to Mr. Bourgon, who, to Mr. Lemaire, seemed not to understand that the benefit he would get under the proposed collective agreement would have a corresponding detri-



ment to Mr. Lemaire. It is also possible to see the remark as the use of economic pressure to influence Mr. Bourgon's exercise of his rights in the upcoming vote. This is the way the complainant invites us to see it. It argues that this amounts to intimidation and coercion contrary to section 70 of the Act. By way of remedy, it asks that we restore Mr. Bourgon to his position as the regular driver of Mr. Lemaire's truck and direct that Mr. Lemaire compensate him for the loss he has suffered by being deprived of the opportunity to drive that truck since December 1988.

24. The terms "intimidation" and "coercion" are not defined in the Act, and the Board has not attempted an exhaustive definition of them in any of its decisions. In the *Corporation of the City of Thunder Bay*, [1983] OLRB Rep. May 781, the Board observed that:

59. Section 70 of the Act prohibits any interference with the rights of individuals under the Act amounting to compulsion by means of intimidation or coercion. Without exhaustively defining the meaning of those terms it appears to the Board that at a minimum they must relate to conduct which, directly or indirectly, deprives an individual of his free choice in the exercise of his rights under the Act. While that might include acts or threats which are physical or economic, the section is aimed at preventing interference with an individual's rights by some form of pressure or force that removes their ability to choose.

A threat that his or her employment or employment opportunities will be reduced or eliminated unless he or she exercises rights in a particular way has generally been regarded as creating the sort of pressure which removes an employee's ability to choose.

25. It seems to us that one person's assertion to another that there will be an adverse result if he or she follows a certain course of action would not ordinarily be described as a "threat" unless the adverse result were something which the speaker appeared to be in a position to bring about and which would not have been a consequence of the course of action in question but for the apparent intention of the speaker to make it so in order to influence the other's behaviour. The first of these conditions is met here: Mr. Lemaire was in a position to affect whether Mr. Bourgon drove the acid run at the time he made the statements complained of. It is the second condition which is problematic in this case. Because of the economic impact its terms would have on Mr. Lemaire, his taking over the full-time driving of his truck was an entirely logical and predictable consequence if the proposed agreement were implemented, whether Mr. Bourgon voted for the agreement or not and no matter how Mr. Lemaire felt about him or the union.

26. We are not entirely sure that the conduct complained of amounts to intimidation or coercion within the meaning of section 70. Even if it does, however, we do not think the remedy sought is the appropriate remedy for such a breach.

27. The remedy sought would put Mr. Bourgon in the position he would have been in if Mr. Lemaire had not resumed driving the acid run himself. That would be an appropriate remedy for Mr. Lemaire's exercise of his right to drive the truck if that were a breach of the Act, but it was not. Mr. Lemaire had the right to resume driving his truck himself or not, as he chose. Although the exercise of that right would have a profound adverse economic effect on Mr. Bourgon, that effect does not make its exercise a violation of the Act. In that regard, Mr. Lemaire's position was no different from that of an employee who has a right to bump another employee out of the only job available to that other employee. Even if he were motivated in the exercise of his right by antipathy to the trade union or to the union activities of the person adversely affected by its exercise, he would not violate the Act or any other law by exercising it, bearing in mind that the constraints of sections 64 and 66 apply only to employers, employer's organizations and persons acting on behalf of employers. The alleged breach of section 70 is not Mr. Lemaire's exercise of his right to take over driving his truck but, rather, his having interfered with Mr. Bourgon's rights in rela-

tion to a ratification vote by threatening that the way he exercised (or continued to exercise) his right would depend on the outcome of that vote.

28. The Board's jurisdiction under section 89 to design a remedy for an offender's breach of the Act must be distinguished from the courts' jurisdiction under section 96 to punish the offender. The Board's remedy must be designed to compensate for or to reverse the effects of the breach; its object should not be punishment of the wrongdoer. Section 70 of the Act is concerned with preventing interference with the exercise of statutory rights. The right with which it is said Mr. Lemaire sought to interfere was Mr. Bourgon's right to freely chose between the alternatives presented in the vote conducted in January 1989. There is no evidence and no suggestion that Mr. Lemaire's having sought to interfere had any actual effect on Mr. Bourgon's exercise of that right. The union won the vote despite Mr. Lemaire's opposition. The complainant does not ask that another vote be conducted. Even if Mr. Lemaire breached section 70 by attempting to interfere with Mr. Bourgon's exercise of his right to vote, the fact that Mr. Bourgon has not since then driven Mr. Lemaire's truck on the acid run is not a result or effect of that breach but, rather, the result of Mr. Lemaire's lawful exercise of his right to resume driving his own truck, and is not properly the subject of a remedy for the alleged breach of section 70.

29. We have considered whether Mr. Lemaire's having deprived Mr. Bourgon of the opportunity to drive the truck during the period before the vote might appropriately be the subject of a remedy for the alleged breach, on the theory that his taking away the truck at that time had the effect of emphasizing the threat and so was an integral part of the breach. The difficulty with this may be illustrated by considering a more conventional example, in which one employee threatens another with physical harm if he or she does or does not join the union. The Board has no jurisdiction to remedy an assault. Whatever else it could do, the Board could not award the victim damages for assault if the wrongdoer later carried out his threat. It does not seem to us that the Board's jurisdiction to award damages for assault could be any greater if, when making the threat, the wrongdoer had illustrated the threatened consequences by striking the victim.

30. We conclude that even if Mr. Lemaire's actions constituted a breach of section 70 of the Act, we would not grant the grievor the remedy he seeks. We do not think any labour relations purpose would be served by an injunctive remedy in the circumstances of this case. In the result, there is no practical need for a decision about whether Mr. Lemaire's actions constituted a breach of section 70 of the Act.

31. For the foregoing reasons, this complaint is dismissed.

---

**0956-88-R; 1073-88-R; 1329-88-R; 1617-88-R; 1639-88-R; 1884-88-R; 1885-88-R; 2324-88-R; 2335-88-R** Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Barry Lightfoot, Respondents; Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Smith Forestry Consultants, Respondents; Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Hotchkiss Forestry Enterprises, Respondents; Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and John Knight and Lorraine Norris c.o.b. as Agassiz Forestry/Environmental Services, Respondents; Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Nicol Seguin, Respondent; Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by the Ministry of Natural resources, and John McCormack, Respondents; Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Elsie McCormack, Respondents; Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by The Ministry of Government Services, and Wayne Forbes c.o.b. as Forbes Janitorial Services, Respondents; Ontario Public Service Employees Union, Applicant v. The Crown in right of Ontario as represented by the Ministry of Transportation, and **Dunning Paving Limited**, Respondents

Crown Transfer - Timeliness - Union seeking declaration of Crown transfer for forestry survey and spraying contracted out by Ministry - Subject matter of contracts constituting "undertaking" within meaning of *Successor Rights (Crown Transfers) Act* - Undertakings "transferred" by tendering process - Transferees constituting "employers" - Performance of work by Crown employees immediately prior to transfer not prerequisite - Nothing in *Successor Rights (Crown Transfers) Act* to suggest union delay in seeking declaration releasing employer from effect of collective agreement - Board declaring Crown transfer

**BEFORE:** Robert D. Howe, Vice-Chair, and Board Members W. H. Wightman and B. L. Armstrong.

**APPEARANCES:** David Wright and Sherrie Currie for the applicant; Roy C. Filion, Karen E. Reynolds, and Al Kaufman for the Crown; Brenda Barker for Hotchkiss Forestry Enterprises; Nicol Seguin appeared on his own behalf; no one appeared for the other respondents.

**DECISION OF ROBERT D. HOWE, VICE-CHAIR, AND BOARD MEMBER, B. L. ARMSTRONG;** October 20, 1989

1. The name of the second respondent in File No. 1329-88-R is amended to read: "Hotchkiss Forestry Enterprises".
2. These are nine applications under the *Successor Rights (Crown Transfers) Act* (the "Act").



3. In a decision dated July 19, 1989, in respect of File Nos. 0956-88-R, 1617-88-R, 1884-88-R, 1885-88-R, 2324-88-R, and 2335-88-R (*Dunning Paving Limited*, [1989] OLRB Rep. July 714, which will be referred to herein as the *Dunning* decision, for ease of reference), the majority of a panel of the Board composed of the writer and Board Members B. L. Armstrong and J. A. Rundle (with Board Member Rundle dissenting) granted those six applications and declared that, by virtue of section 2(1) of the Act, the respondents Barry Lightfoot, John Knight and Lorraine Norris c.o.b. as Agassiz Forestry/Environmental Services, John McCormack, Elsie McCormack, Wayne Forbes c.o.b. as Forbes Janitorial Services, and Dunning Paving Limited, had each become bound by the collective agreement between the applicant (also referred to in this decision as "O.P.-S.E.U." and the "Union") and the Crown (as represented by the Management Board of Cabinet). In the instant proceedings, the Union seeks similar declarations in respect of the respondents in File Nos. 1073-88-R, 1329-88-R, and 1639-88-R. Those applications are opposed by the Crown and the other respondents who appeared or were represented at the hearing. The Crown also seeks to have the Board reconsider the *Dunning* decision on the basis of a judgment rendered on December 22, 1988 by the Supreme Court of Canada in *Le Syndicat National des Employes de la Commission Scolaire Regionale de la L'Outaouais (CSN) v. Union des Employes de Service, Local 298 (FTQ)*, which will be referred to herein as "*CSN*" for ease of exposition. That request for reconsideration is opposed by O.P.S.E.U.

4. The evidence regarding File No. 1639-88-R was heard on July 26, 1989, and the evidence regarding File Nos. 1073-88-R and 1329-88-R was heard on August 1, 1989. On August 2, 1989, the Board heard argument in respect of those three applications, and also in respect of the aforementioned request for reconsideration. In preparing this decision, we have duly considered all of the oral and documentary evidence which was adduced before us, the statement of facts to which the parties to the application in File No. 1329-88-R agreed for purposes of this case, and the submissions that were made on behalf of the various parties.

5. File No. 1639-88-R, pertains to a contract between the Ministry of Natural Resources (the "Ministry") and the respondent Nicol Seguin ("Seguin") in respect of a natural regeneration survey of approximately 960 hectares of Crown forest in the Nipissing and Ottawa River Forest Management Units of the Ministry's North Bay Administrative District (the "District"). Regeneration surveys form part of the Ministry's forest management program. A natural regeneration survey is generally performed about five years after an area of forest has been harvested. Its purpose is to determine the level of natural regeneration which has occurred during that period. (Where transplanting has occurred, an "artificial regeneration survey" is conducted to determine the level of regeneration which has occurred.) To conduct a regeneration survey, lines are run in a set grid pattern across the area to be surveyed, and plots are surveyed along that line. Information is thereby gathered concerning such matters as the size and vigour of the species, the amount of competing vegetation, and the overall condition of the regeneration. That data is recorded on silviculture assessment stock tallying sheets supplied by the Ministry, and is used to perform calculations from which a regeneration figure for the area can be interpolated. This figure enables Ministry officials to assess whether the area can be left to grow on its own or whether transplantation or other regeneration work is required.

6. Prior to 1988, natural regeneration surveys and artificial regeneration surveys had been performed in other areas in the District by seasonal and regular employees of the Ministry. However, in 1988 a relatively high incidence of forest fires kept many of the Ministry's seasonal and regular employees engaged in activities other than forest management work for much of the season. In order to catch up on some of that work, the Ministry extended the contracts of three seasonal employees, and sought tenders in respect of the aforementioned natural regeneration survey, which had to be completed prior to snowfall and leaf drop. Bob Brunette, the Ministry's Forest

Operations Manager for the District, testified that at the time of that tender, there were no seasonal employees on layoff with recall rights under the collective agreement. Mr. Brunette considered hiring some additional seasonal employees to perform that regeneration survey, but decided not to do so because of time constraints.

7. Tenders in respect of the contract in question were invited by means of a newspaper advertisement and by means of letters sent by the Ministry to individuals and companies that had previously expressed an interest in performing regeneration surveys. The Ministry held a mandatory information session on September 13, 1988 at the District Office to explain the survey procedure and how it was to be carried out. Only those who attended that meeting were eligible to submit a bid for the contract. The tender closed at noon on September 16. The contract was awarded to Seguin, whose bidding price was the lowest of the six tenders received. Seguin had worked for the Ministry as a seasonal employee during two or three previous summers. He performed a regeneration survey during his first summer of seasonal employment with the Ministry, and also performed other forest management functions. He also worked for the Ministry as a seasonal employee during June of 1988 doing tree marking, which is another part of the Ministry's forest management program.

8. As a result of that tender, on September 22 the Ministry and Seguin entered into a contract which detailed the specifications of the regeneration survey and the terms under which it was to be performed. That contract required Seguin to complete the survey before November 4, and to provide the Ministry on or before November 11 with all final information and data collected in respect of the survey. He hired an undergraduate forest technician from Sioux College as an employee to assist him in performing that contract (in accordance with one of the provisions of Schedule "A" to the contract, which provided that a "survey party shall consist of a minimum of two persons"). The aerial photographs and maps required to locate the areas to be surveyed were provided to Seguin by the Ministry as part of the tender package. The Ministry also provided him with tallying sheets and an instruction manual concerning the assessment procedure. Seguin provided the remainder of the equipment needed to perform the contract, including a clipboard, hip chain (which is a measuring device consisting of a counter with a spool of thread), stereoscopes (used to view the aerial photographs), and a sketchmaster (used to transpose from the aerial photographs to the map). After Seguin submitted his invoice and the other documentation required under the contract, Ministry employees audited his performance and verified that it was within the performance range specified in the contract. He was then paid by the Ministry in accordance with the terms of the contract.

9. File No. 1073-88-R pertains to a contract between the Ministry and Smith Forestry Consultants ("Smith") in respect of the ground spray (hand-spot) application of the chemical Velpar in certain areas in the Ministry's Blind River Administrative District. File No. 1329-88-R pertains to a similar contract between the Ministry and Hotchkiss Forestry Enterprises ("Hotchkiss").

10. Velpar is a selective chemical herbicide which is applied in newly planted stands of trees (such as jack pine), as part of the Ministry's forest management program, in order to eliminate unwanted vegetation (such as poplar and grasses) that would otherwise compete with the trees for light, moisture, and nutrients. Portable backpack sprayer units are used to apply the chemical in measured amounts in various spots between the trees so as to achieve a coverage of 3000 spots per hectare. The chemical subsequently kills the roots of the unwanted plants after precipitation causes its absorption into the soil. A blue dye called "Traxit" is mixed with the Velpar prior to spraying to provide a means of visually locating the spots which have been sprayed. Prior to Velpar becoming available for use in the mid 1980's, the Ministry had done some ground application of other chemicals, but their limited effectiveness had necessitated a lot of hand clearing projects.



11. Prior to 1988 the hand-spot application of Velpar had been performed by Ministry employees in its Blind River Administrative District. However, in 1988 the Ministry decided to have it performed by contractors. Invitations to tender were sent to Smith, Hotchkiss, and various other firms which the Ministry knew to have some interest in bidding on such contracts. The tender was initially divided into four different areas (each referred to in the tender as a "Job No.") but one of them was subsequently dropped. Hotchkiss was the successful bidder on Job No. 1 (involving 60 hectares in Timbrell and Villeneuve Townships), and Smith was the successful bidder on Job Nos. 2 and 3 (involving a total of 120 hectares in Esten, Proctor, and Lewis Townships). None of those areas had ever been sprayed with Velpar before, but some areas nearby the areas covered by Job No. 3 had been sprayed with Velpar by some of the Ministry's seasonal employees in the previous year. After beginning their seasonal work by planting trees in May, those seasonal employees performed handspot spraying of Velpar and then performed hand clearing work until the end of the season (in early September).

12. After being notified by the Ministry that they were the successful bidders, Hotchkiss and Smith each entered into a detailed written contract with the Ministry. A pre-project meeting was also held with each of the contractors to ensure that all of the documentation was in place and that all of the necessary arrangements had been made for the proper performance of their contracts. Those pre-project meetings with Smith and Hotchkiss were held on June 1, 1988, and June 17, 1988, respectively.

13. Although they are available on the open market, under the terms of those contracts the Ministry agreed to provide Velpar and Traxit to Smith and Hotchkiss. The contracts obligated the contractors to provide their own backpack sprayer units, but the Ministry agreed to rent some of its units (which had been purchased by the Ministry at a cost of about \$225 each) to Hotchkiss at a nominal rental rate of \$1 per unit, when the units which Hotchkiss had ordered had not arrived by the time Hotchkiss was to begin spraying under the contract. Hotchkiss completed all of its work under the contract during the period from June 17 to June 26. No backpack sprayer units were rented to Smith, which began to spray with its own units in early June and completed the contract by June 30. Both contractors were paid the full amounts which they invoiced since the Ministry's assessment (performed by Ministry employees) indicated that the spraying had been properly performed. (The contracts provided for assessment on the basis of four groups of 25 trees per hectare, but assessment on the basis of one group of 25 trees per hectare was substituted on the agreement of the parties when the original plan proved to be too cumbersome.)

14. The work under Smith's contract was performed by Peter Smith (the principal of Smith Forestry Consultants) and by other persons employed by Smith. Gordon Hotchkiss, the President of Hotchkiss Forestry Enterprises, did not personally perform the work under his company's contract. The employees used by Hotchkiss to perform its contract are described in the following statement of facts agreed to by the parties for purposes of this case, as presented to the Board by Hotchkiss's representative, Brenda Barker, after Mr. Hotchkiss proved to be unable to attend the hearing because of pressing family matters:

During the 1988 contract the employees who performed the work in question were five employees. They were all students that were working during their summer vacation. The students worked on other projects for Hotchkiss. They worked from approximately May 2 to approximately June 15 on tree planting, then from June 17 to June 26 on the herbicide spraying project. Then their employment was completed. They didn't work after June 26.

15. In submissions which were subsequently adopted by Ms. Barker on behalf of Hotchkiss, Mr. Filion argued on behalf of the Crown that the Supreme Court of Canada's decision in *CSN* has changed the state of the law concerning the meaning of the term "undertaking". In that case, a



school board had always used contractors to clean six of its schools. The contracts for those janitorial services were awarded for each school annually through calls for tenders, and were generally in effect from July 1 of one year to June 30 of the following year. In 1979 the contracts for janitorial services at four of the schools were awarded to one company ("Netco"), and the contracts for janitorial services at the other two schools were awarded to another company ("MBD"). The CSN Union held certificates for the Netco employees working at those four schools, and also held certificates for the MBD employees working at the other two schools. All of those employees embarked upon a lawful strike in early December of 1979, as a result of which the school board terminated the contracts with Netco and MBD. After calling for new tenders, the school board awarded contracts for janitorial services at the six schools to a third company ("SMR") in January of 1980. When another union (the "FTQ Union") applied for certification in respect of various employees of SMR, including the employees performing the janitorial work at the six schools, the CSN Union attempted to defeat that application for certification by filing an application in which it sought to have a transfer of rights and obligations from MBD and Netco to SMR recorded pursuant to sections 45 and 46 of the (Quebec) *Labour Code*, (the "Code"). Those sections provide as follows:

45. The alienation or operation by another in whole or in part of an undertaking otherwise than by judicial sale shall not invalidate any certification granted under this code, any collective agreement or any proceeding for the securing of certification or for the making or carrying out of a collective agreement.

The new employer, notwithstanding the division, amalgamation or changed legal structure of the undertaking, shall be bound by the certification or collective agreement as if he were named therein and shall become *ipso facto* a party to any proceeding relating thereto, in the place and stead of the former employer.

46. An [sic] labour commissioner may make any order deemed necessary to record the transfer of rights and obligations provided for in section 45 and settle any difficulty arising out of the application thereof.

That application was granted by the labour commissioner, who concluded that, although no contract or transaction of any kind had been entered into between SMR, MBD, and Netco in respect of the janitorial work in question, and although no legal relationship existed between any of them, section 45 of the Code applied. Accordingly, the commissioner concluded that the rights and obligations of MBD or Netco, as the case might be, had been transferred to SMR, which he declared to be bound by the certification of MBD and Netco, and by the legal strike initiated against them. His decision was appealed to the Quebec Labour Court and was upheld by a majority of that court. However, that decision was quashed by the Superior Court (which allowed a motion for evocation filed by the FTQ Union). The Superior Court judgment was affirmed by the Quebec Court of Appeal, and by the Supreme Court of Canada.

16. In affirming that the commissioner had exceeded his jurisdiction, Beetz J. (who wrote the unanimous judgment of the four members of the Court who decided the appeal) held that section 45 of the Code did not bring about a transfer of rights from Netco and MBD to SMR because there was never an alienation or agreement to operate between Netco and SMR, nor between MBD and SMR. The Court noted that, in reality, those three companies were competitors and the school board was a client, which had dealt first with Netco and MBD, then with SMR, without ever having used any employees of its own to perform the work. Thus, the case is clearly distinguishable from the instant applications, in which parts of the Ministry's forest management program which the Ministry previously performed itself by using its own employees have been transferred to contractors. However, the Supreme Court of Canada's judgment in *CSN* also construed the term "undertaking" in the context of section 45 of the Code. In rejecting the "functional" definition

adopted by the commissioner (and the majority of the Quebec Labour Code) which merely required that the same jobs, tasks, and activities be performed by the alleged successor, the Court indicated that “[t]he undertaking at issue in section 45 ‘consists of a self-sustaining organization of resources through which specific activities can be wholly or partly carried on’”. Crown counsel urges us to adopt a similar definition in these proceedings. However, unlike the Code which contains no definition of “undertaking”, section 1(1)(h) of the Act defines that term in the following expansive manner:

“undertaking” means a business, enterprise, institution, program, project, work or a part of any of them.

18. In *KBM Forestry Consultants Inc.*, [1987] OLRB Reports March 399 (“*KBM*”), the Board left open the issue of whether the term “work” in the section 1(1)(h) definition of “undertaking” meant “the performance of labour”:

10. The relevant portions of the *Successor Rights (Crown Transfers) Act* are as follows:

1.-(1) In this Act,

• • •

(f) “transfer” means a conveyance, disposition or sale;

• • •

(h) “undertaking” means a business, enterprise, institution, program, project, work or a part of any of them.

2.-(1) Where an undertaking is transferred from the Crown to an employer and a bargaining agent has a collective agreement with the Crown in respect of employees employed in the undertaking, the employer is bound by the collective agreement as if a party to the collective agreement until the Board declares otherwise.

Comparable provisions under section 63 of the *Labour relations Act* (also referred to as “section 63”) are as follows:

63.-(1) In this section,

(a) “business” includes a part or parts thereof;

(b) “sells” includes leases, transfers and any other manner of disposition, and “sold” and “sale” have corresponding meanings.

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if he had been a party thereto

• • •

In both statutes, there is provision for the Board to determine the composition of the bargaining unit where it is necessary to do so.

11. The *Successor Rights (Crown Transfers) Act* was enacted to fill the gap left by the fact that section 63 of the *Labour Relations Act* does not apply to the Crown: *Municipality of Metropolitan Toronto*, [1975] OLRB Rep. Oct. 777. In enacting the new statute, however, the Legislature employed wording different from that found under the parallel section 63 of the *Labour Relations Act*. That wording reflects the nature of certain of the wide range of activities engaged in by government. Thus even though jurisprudence under section 63 of the *Labour Relations Act* is

applicable to applications under the *Successor Rights (Crown Transfers) Act* (see, for example, *The Ministry of Natural Resources*, [1986] OLRB Rep. March 331), cases under the latter statute must be considered in the context of the wording of that Act. As the Board said in *The Ministry of Natural Resources*, *supra*, at paragraph 4, “the *Successor Rights (Crown Transfers) Act* was intended to apply *at least* to circumstances analogous to those in which the Board has found a ‘sale of a business’ under section 63 of the *Labour Relations Act*” (emphasis added). The Board’s interpretation of section 2 of the *Successor Rights (Crown Transfers) Act* is not limited by its interpretation of section 63 of the *Labour Relations Act*, but must be given a broad interpretation (a general principle also applied to section 63) which takes into account the extensive definition of “undertaking”. For example, in our view, it does not require the transfer of physical assets, as suggested by counsel for KBM, nor does the length of the contract affect whether it is a “transfer”, as suggested by counsel for the Crown. Underlying the legislation is the recognition (a recognition also underlying section 63 of the *Labour Relations Act*) that “the continuity of the work performed before and after the transfer [is of “particular significance”], since the trade union is certified to represent certain work groups, the collective agreement regulates the conditions of work for employees in those groups, and the purpose of section [63] is to preserve both the bargaining relationship and the collective agreement”: *Metropolitan Parking Inc.*, [1979] OLRB Rep. Dec. 1193, paragraph 32, cited in *The Ministry of Natural Resources*, *supra*. More specifically in the context of the *Successor Rights (Crown Transfers) Act*, the gains achieved by the union with respect to the jobs which are integral to a particular government program are not to be lost through the government’s transferring that program (and those jobs) to a private entity (and *vice versa*). From another perspective, it may be said that whatever protections or conditions accrue to those jobs through representation by the union are not to be threatened through the government’s transferring the program or portion of a program, of which they are a part, to a private entity.

12. It has been held that under section 63, the transfer of work alone does not meet the requirements of the section: see, for example, *British American Bank Note Co. Ltd.*, [1979] OLRB Rep. Feb. 72 and *Corporation of the City of Stratford*, [1985] OLRB Rep. June 923. Under section 63, that which may be sold is the predecessor employer’s business or portion of a business which has been defined in relation to economic organization, including physical assets, operating personnel and goodwill: *Metropolitan Parking Inc.*, *supra*, and cases cited therein. Under section 2, on the other hand, that which may be transferred or conveyed includes “projects” or “programs” or “work”. We do not necessarily conclude that “work” within the meaning of section 2 means the same type of work as that the transfer of which does not alone satisfy the requirements of section 63, i.e., the performance or labour; more appropriately, work must be read within the context of the word “undertaking”. However, it is not necessary for us to decide that issue in this case. We are satisfied that in this case a “program” or “project” is the most relevant form of undertaking listed in section 2. A program or project may be defined as the inter-related steps or functions (or “the work”) established for the purpose of achieving a particular objective. The concept of “title” cannot attach to a project or program (although title to equipment or land might pass; however, we have already said that the transfer of either equipment or land is not necessary to a transfer within the meaning of section 2). Here, the Crown is involved in a reforestation project or program, operating out of its Thunder Bay Forest Nursery, and as part of that project or program, it is necessary to harvest seedlings which will later be replanted. A portion of this harvesting, following upon the loosening of the soil and prior to the actual replanting, was, but is no longer, done by the Ministry; it is now done by KBM. The Ministry has transferred (or “disposed” of) that part of the project to KBM, although it retains an interest in ensuring that the work performed by KBM is performed in a manner consistent with the standards established by the Ministry for the reforestation program. That brings it squarely within section 2 of the *Successor Rights (Crown Transfers) Act*. We are satisfied that there has been a continuation of the work and jobs, that OPSEU is the bargaining agent for employees performing that work and that the Crown and OPSEU are parties to a collective agreement applying to that work.

19. In dismissing an application for judicial review of *KBM* on April 25, 1988, the Divisional Court stated:

In our view there can be, as in this case, a disposition of services effecting a transfer under s.2(1) of the Act. Such a transfer is consonant with the large range [of] governmental activity contem-



plated within the definition of “undertaking” in s.1(1)(h) of the Act. The diversity of such activity goes beyond the concept of “business” as found in S.63 of the Ontario Labour Relations Act and accordingly the term “undertaking” as found in S.1(1)(h) of the Act should not be limited by analogy [to] S.63. In concluding that the reforestation herein [is a] “program, project, work or a part of any of them”, the award was not patently unreasonable.

20. In *Charmaine’s Janitorial Services*, [1988] OLRB Rep. Sept. 871 (“*Charmaine*”), the Board specifically rejected the notion that the term “work” refers to “exertion of labour” and that the section 1(1)(h) definition of “undertaking” includes the mere performance of labour in itself:

20. The jurisprudence makes it clear that the transfer of work alone does not constitute a sale of a business or part of a business under section 63: *British American Bank Note Co. Ltd.*, [1979] OLRB Rep. Feb. 72, at para. 11 (“section [63] cannot be interpreted as guaranteeing to a bargaining agent an absolute right of property in the work performed by its members”); *Metropolitan Parking Inc.*, *supra*, at paras. 36 (“The focus of section [63] is the business entity -- the employer’s total economic organization -- not simply the work which the employees perform:”), 38 (“A transfer of work, by itself, is simply not enough to ground a section [63] finding.”) and 44 (“The Legislature could have provided for the continuation of bargaining rights whenever there is a continuity of the work performed, but it did not do so.”); *The Charming Hostess Inc.*, [1982] OLRB Rep. April 536, at para. 33; *The Corporation of the City of Stratford*, [1985] OLRB Rep. June 923.

21. We are of the view that the definition of “undertaking” in clause 1(1)(h) of the Act does not include the mere performance of labour in itself. Clause 1(1)(h) does not state that “undertaking” includes the enumerated words, but rather that it means those words and therefore is limited to them. Where the context does not suggest a contrary intention, given a list of terms in a definitional phrase, the terms should be interpreted with reference to each other (that is, as “of the same kind or nature” or *ejusdem generis*), as counsel for the Crown argues, rather than interpreting one of the terms, here the term “work”, as if it were the only term of its own class in a list of terms of another class or classes (that is, “of its own particular kind” or *sui generis*). Furthermore, “work” is part of a list which is preceded by the indefinite article “a” and the most common sense reading of the clause is that “‘undertaking’ means a ... work or a part of [it]”. We conclude that the term “work” does not refer in itself to the exertion of labour and that *in and by itself* the performance of labour does not constitute an undertaking.

22. As the Divisional Court indicated in *KBM*, *supra*, however, *the provision of services* may constitute an undertaking within the meaning of clause 1(1)(h) of the *Crown Transfers Act*. The provision of services is, of course, a function integral to modern governments and while it may be difficult to distinguish the provision of services from the performance of labour, in the government context, many programs are comprised in their physical manifestation of little more than the provision of services to the public. The *purpose* of such provision is nevertheless to carry out a government undertaking or part of an undertaking.

23. Thus under section 63, which is concerned with the private sector, the Board has been insistent on ensuring that more than the expenditure of energy or physical exertion be transferred from one entity to another in order for there to be a transfer of a business. It has held that if all that is transferred is the opportunity to do work, there is no transfer; there is no transfer, for example, if business A has contracted to business B the right to provide labour to carry out some purpose (such as providing personnel to help the predecessor employer run its hospitality portion of its business better: *The Charming Hostess Inc.*, *supra*, paras. 37 - 39). For that reason, the Board has spoken of the transfer of assets, goodwill, inventory, customer lists and other indicia of a thriving or once thriving business and has required that some of such indicia be present to find that a business has been transferred. In referring to a “part” of a business, the Board has not been willing to consider the exertion of labour as constituting a “part”, but rather has interpreted “part” as a coherent and severable portion of a business, such as one of a chain of stores or a clearly identifiable department in a factory: *Metropolitan Parking Inc.*, *supra*, para. 33.

24. The distinction between “work” and a total business is less easy to make in the government context because of the nature of the undertakings carried on by government. While the purpose

of section 63 and that of the *Crown Transfers Act* are analogous, it is not insignificant that the wording of the two provisions are not the same. The legislature has explicitly recognized that the functions of government place it in the role of employer, but that as an employer it may be engaged in quite different sorts of interests than the private sector, even as it also may be engaged in quite similar interests in form if not in substance; the provision of social assistance or of housing and the functions performed by employees in connection with such programs are fundamentally different than the usual private business and the functions carried out by its employees, but the running of a railway or of a bookshop will not outwardly be different whether carried on by a private employer or by government and can be characterised much more easily as a “business” than the provision of social assistance. Yet the provision of social assistance or of housing or the running of a railway or bookstore are all “undertakings” within the meaning of clause 1(1)(h) of the *Crown Transfers Act*.

25. In other words, while the purpose may be the same, the activities encompassed by the two provisions are not similar. Just as “business” and “undertaking” are neither conceptually nor in fact synonymous, the definition of “part” of an undertaking cannot be the same as that of “part” of a “business” but must take into account the different ways in which government carries out its functions and in which it acts as an employer. As “undertaking” is broader than “business”, so may “part” of an undertaking be broader than “part” of a business. The notion of a coherent and severable portion of a business, in the sense of one store of many, which is applicable under section 63, is not necessarily appropriately transferred to the *Crown Transfers Act*. A program or project may be comprised of several distinct functions which can be severed but which do not constitute anything resembling a microcosm of the whole. Thus the operation of Algonquin Park consists in providing services to the users of the Park which make the Park’s use possible in the first place or more enjoyable or complete, as well as services which enable the government to benefit from the operation of the Park, among other things. These activities are severable in the sense of being easily identifiable as distinct services, but they mean very little on their own and are not analogous to the manner in which the Board has generally defined “part” of a business under section 63. That does not make them any less “part” of the undertaking of operating the Park, however, since in reality the operation of the Park can be seen only as comprised of these different services or functions.

21. We respectfully agree with that reasoning and, having regard to the provisions of the Act and in particular to the section 1(1)(h) definition of “undertaking”, we are not persuaded that anything which the Supreme Court of Canada said in *CSN* in construing that term in the context of the Code, negates the validity of that reasoning, which was adopted and applied in *Dunning*.

22. Crown counsel also referred us to the Canada Labour Relations Board decision dated May 8, 1989 in *Canadian Union of Postal Workers v. Canada Post Corporation and Nieman’s Pharmacy* (C.L.R.B. Files 585-199 and 585-243). In the course of deciding that Canada Post did not sell a part of its business by entering into contractual arrangements under which Nieman’s Pharmacy operated two “gross marginal postal outlets”, the Canada Labour Relations Board found the *CSN* judgment to be relevant to the application of section 44 of the *Canada Labour Code*, which provides as follows:

44.(1) In this section and in sections 45 and 46,

“business” means any federal work, undertaking or business and any part thereof;

“sell”, in relation to a business, includes the lease, transfer and other disposition of the business.

(2) Subject to subsections 45(1) to (3), where an employer sells his business,

- (a) a trade union that is the bargaining agent for the employees employed in the business continues to be their bargaining agent;
- (b) a trade union that made application for certification in respect of any employees

employed in the business before the date on which the business is sold may, subject to this Part, be certified by the Board as their bargaining agent;

- (c) the person to whom the business is sold is bound by any collective agreement that is, on the date on which the business is sold, applicable to the employees employed in the business; and
- (d) the person to whom the business is sold becomes a party to any proceeding taken under this Part that is pending on the date on which the business was sold and that affects the employees employed in the business or their bargaining agent.

However, we do not find that decision to be of assistance in construing the Act because, as was the case with the applicable legislative provisions in *CSN*, the *Canada Labour Code* provisions under which it was decided leave the term “undertaking” undefined, and do not contain anything like section 1(1)(h) of the Act, by which the Ontario Legislature has given that term an expansive definition.

23. For the foregoing reasons, the Crown’s request for reconsideration of the *Dunning* decision is hereby rejected, as is its contention that the Board should adopt a different approach in the instant decision. (In view of our conclusion in that regard, it is unnecessary to determine whether the subsequent release of an English translation of a Supreme Court of Canada judgment that was only available in French at the time the case was argued before the Board provides a legitimate basis for a reconsideration request.)

24. Under section 2(1) of the Act, an employer is bound by the collective Agreement between the Union and the Crown where an undertaking is transferred from the Crown to the employer and the Union has a collective agreement with the Crown in respect of employees employed in the undertaking. It is clear from the evidence that the ground spray application of Velpar forms part of the Ministry’s forest management program, just as the marking and tallying of trees described in paragraphs 27 to 31 of *Dunning* formed part of that program (and just as the lifting of nursery trees and the transplanting of seedling stock described in paragraphs 12 to 14 of *Charmaine* formed part of its reforestation program). The same is true of a natural regeneration survey. The Crown provided Smith, Hotchkiss, and Seguin with detailed written instructions concerning the performance of their obligations under their respective contracts, and also gave them access to the Crown forests and Crown management units in which they were to fulfil those obligations. The Ministry supplied Seguin with aerial photographs and maps, tallying sheets, and an instruction manual concerning the assessment procedure. It supplied Smith and Hotchkiss with Velpar and Traxit. It also provided Hotchkiss with backpack sprayer units at a nominal rent when the units which Hotchkiss had ordered had not arrived by the time Hotchkiss was to begin spraying under the contract. Having regard to the breadth of the section 1(1)(h) definition, and to the principles set forth in the decisions quoted above, we are satisfied that the subject matter of each of the three contracts in question is an “undertaking” within the meaning of the Act, because the subject matter of each of them is a part of a Crown program, namely, the Ministry’s forest management program.

25. It is also clear from the evidence that, in each of the three applications, the undertaking has been “transferred”, within the meaning of section 1(1)(f) of the Act, from the Crown to an employer through the tendering procedures described above. As indicated in paragraph 54 of *Dunning*, the term “employer” is a label used to identify the corporation, partnership, association, or other entity to which an undertaking has been transferred. Moreover, even if the Board were to adopt the more restrictive definition of “employer” which was considered and rejected in *Dunning* (namely, that an “employer” is a person or firm that employs a worker or workers for remuneration), Smith, Hotchkiss, and Seguin would all still be found to be employers, because they each



employed at least one employee for remuneration in fulfilling their contractual obligations to the Crown.

26. The final prerequisite of section 2(1) is that the Union have “a collective agreement with the Crown in respect of employees employed in the undertaking”. It was contended by Crown counsel that this prerequisite is not met unless there is evidence that the functions covered by the contract have been performed in the past by Crown employees in the precise location(s) to which the contract pertains. In making that submission, counsel referred to these three applications as involving “new work”, in the sense that no regeneration survey or ground spray application of Vel-par had ever been carried out by Crown employees in the precise locations covered by the contracts. However, the contention that, for section 2(1) of the Act to apply, there must be evidence that the operations in question have been performed in the past by Crown employees in the precise locations covered by the contracts has already been considered and rejected by the Board. In *Dunning*, the Board wrote as follows in paragraph 56:

The final prerequisite of section 2(1) is that the Union have “a collective agreement with the Crown in respect of employees employed in the undertaking”. In construing that phrase in the context of section 2(1), we have derived some assistance from that subsection’s omission of the words “immediately before the transfer”, which words follow that phrase in section 4(1) of the Act. The omission of those words from section 2(1) supports the Union’s contention that for that provision to be applicable there need not have been Crown employees performing the work in question immediately before it was contracted out. Indeed, as indicated above, Crown counsel acknowledged in his reply argument that performance of the work in question by Crown employees immediately prior to the transfer is not a prerequisite of section 2(1). If it were, the applications in *KBM* and *Charmaine* could not have succeeded as, in view of the seasonal nature of the work, there would not have been any Crown employees performing it immediately prior to the transfers of undertakings which occurred in those cases. Moreover, the narrow interpretation of section 2(1) on which the “lack of continuity argument” is based gives rise to a serious anomaly from a labour relations perspective. If Crown counsel’s interpretation of section 2(1) is correct, even if the Union acted as expeditiously as possible to preserve its bargaining rights by filing and successfully pursuing an application under the Act shortly after an undertaking was first transferred by the Crown to an employer by means of a contract, the Union would be unable to continue to preserve those bargaining rights if, after that contract expired or was terminated, the Crown transferred the undertaking to another employer without using Crown employees to perform any of the work in the interim. As indicated above, Union counsel contends that the word “employees” in the section 2(1) phrase “collective agreement with the Crown in respect of employees employed in the undertaking” should be interpreted to mean “those who would do the work if done by the Crown”. It is unnecessary for purposes of this decision to rule upon the validity of that proposed interpretation, which might bring within the ambit of the Act the contracting out of new functions which have never previously been performed by Crown employees. None of the applications covered by this decision involves such a situation. Snow plowing, garbage pick-up and disposal, janitorial work, operating and maintaining access points, and marking and tallying of trees have been and continue to be performed by Crown employees covered by the collective agreement between the Union and the Crown (although the number of Crown employees performing such work has been reduced by contracting out). Without attempting to provide a definitive interpretation of the phrase in question, we are satisfied that it is at least broad enough to encompass situations in which the Union has historically had, and has at the time at which the contract transfers the undertaking to an employer, a collective agreement with the Crown in respect of Crown employees who perform the type of functions covered by the contract, irrespective of whether such functions are actually being performed at that time. This interpretation affords due recognition to the aforementioned difference in wording between sections 2(1) and 4(1), and does not give rise to the aforementioned anomaly. Moreover, it is also reflective of the “fair, large and liberal construction and interpretation” which, as noted above, section 10 of the *Interpretation Act* directs be given to every Act of the Legislature. *In light of our conclusion concerning the meaning of that phrase, we find no merit in Crown counsel’s submission that for section 2(1) to apply, there must be evidence that the work in question has been performed in the past by Crown employees in the precise location covered by the contract.* Thus, it is irrelevant (in respect of File No. 2324-88-R) whether the M.G.S.

ever used Crown employees to perform janitorial work at the Centre, as it is clear from the evidence that it has used and continues to use Crown employees to perform that same function at other locations, and that such employees were and are covered by the Crown's collective agreement with the Union. The same is true of the tree marking and tallying described above in respect of File No. 1617-88-R. As indicated above, the M.N.R. has done tree marking and tallying in the Lindsay District every year for at least the past six years, but the locations in which it has been performed have changed each year in accordance with the nature of the Ministry's forest management program, which requires different areas to be planted and tended at different times. To adopt in such a context the approach suggested by Crown counsel would be to unduly narrow the scope of the Act and thwart the attainment of its object of preserving bargaining rights in the context of the transfer of an undertaking from the Crown to an employer.

[Emphasis added.]

27. Similarly, in the instant case the evidence indicates that the Ministry has in recent years used its own employees to perform natural regeneration surveys in its North Bay Administrative District, and to perform ground (hand-spot) application of Velpar in its Blind River Administrative District. The precise locations in which those functions have been performed have changed from year to year in accordance with the nature of the Ministry's forest management program, of which they are each a part. Under the circumstances, we are satisfied that, at all material times, the Union had a collective agreement with the Crown in respect of employees employed in the undertakings to which these applications pertain.

28. Ms. Barker contended that the application pertaining to Hotchkiss should be dismissed because it was not filed with the Board during the time that Hotchkiss was carrying out its contract with the Ministry. However, nothing in the Act precludes the Board from dealing with an application which pertains to a contract which has been fulfilled prior to the application. The only time limits specified in the Act are the sixty-day periods referred to in clauses (a) and (b) of section 4(2), which apply to applications for termination of bargaining rights on the basis of a substantial change in the character of the undertaking. No such application is before us in these proceedings. When the Crown transfers an undertaking to an employer and a bargaining agent has a collective agreement with the Crown in respect of employees employed in the undertaking, the employer becomes bound by the collective agreement by virtue of section 2(1) of the Act. Thus, no application is necessary to give the collective agreement binding effect, as the employer is bound by it as a matter of law until the Board otherwise declares. Although delay on the part of a trade union in seeking to enforce rights under a collective agreement may in some circumstances support an arbitral declaration to remedy breaches of a collective agreement, nothing in the Act suggests that delay on the part of a trade union in filing an application under the Act constitutes a legitimate basis for releasing the employer from the binding effect of the collective agreement. Moreover, even if we were to assume (without deciding) that we could "otherwise declare" on the basis of delay, there is no evidence that Hotchkiss has been prejudiced by any delay on the part of the Union, nor is there anything else in the circumstances of this case that would warrant such a declaration.

29. Ms. Barker also asked the Board to determine which parts of the collective agreement were binding upon Hotchkiss. However, the Act gives us no jurisdiction to make such a determination. Issues concerning whether particular provisions of the collective agreement applied to Hotchkiss, and whether Hotchkiss breached those provisions, are matters for determination under the arbitration provision included in the collective agreement (or deemed to be so included by section 44 of the *Labour Relations Act*), as are a number of the other matters raised by the respondents' representatives in their submissions.

30. Mr. Filion and Ms. Barker posed several questions based upon hypothetical fact situations which give rise to a number of interesting issues. However, it is neither necessary nor appro-

priate for us to comment on those issues as they are not properly before us for adjudication in these proceedings. It is sufficient for purposes of the instant case to indicate that, on the totality of the evidence, we are satisfied that on or about June 17, 1989, the Crown (as represented by the Ministry) transferred to Hotchkiss Forestry Enterprises the aforementioned undertaking; that at the time of the transfer the Union had a collective agreement with the Crown in respect of employees employed in the undertaking; and that as a result, Hotchkiss Forestry Enterprises became bound by that collective agreement by virtue of section 2(1) of the Act.

31. Having regard to the agreement of the parties to File No. 1329-88-R regarding the composition of the bargaining unit, the Board, pursuant to section 4(1) of the Act, hereby determines that all employees of Hotchkiss Forestry Enterprises who performed the application of herbicide using the chemical Velpar by ground application in Villeneuve and Timbrell Townships, Blind River District, as per tender # BL 8802, save and except those employees otherwise excluded from the collective agreement between the Management Board of Cabinet and O.P.S.E.U., constitute a unit of employees appropriate for collective bargaining.

32. With respect to File No. 1073-88-R, the Board, for the reasons set forth above, hereby declares that the Crown has transferred an undertaking to Smith Forestry Consultants; that at the time of the transfer the Union had a collective agreement with the Crown in respect of employees employed in the undertaking; and that, as a result, Smith Forestry Consultants became bound by that collective agreement by virtue of section 2(1) of the Act.

33. With respect to File No. 1639-88-R, the Board, for the reasons set forth above, hereby declares that the Crown has transferred an undertaking to Nicol Seguin; that at the time of the transfer the Union had a collective agreement with the Crown in respect of employees employed in the undertaking; and that, as a result, Nicol Seguin became bound by that collective agreement by virtue of section 2(1) of the Act.

#### **DECISION OF BOARD MEMBER W. H. WIGHTMAN; October 20, 1989**

I am of the opinion that in these cases, as in *Dunning Paving Limited*, [1989] OLRB Rep. July 714, the *Successor Rights (Crown Transfers) Act* is being interpreted by the majority in a fashion such as to effectively deny to the respondents freedoms guaranteed under both Section 3 of the *Labour Relations Act* and Section 2(d) of the Canadian Charter of Rights and Freedoms, as articulated in Part I of the *Constitution Act*.

The applications seek from the Board a benefit which might properly be sought through the negotiation of more stringent collective agreement provisions regarding the contracting out of work. In the collective bargaining forum the parties themselves would be able to fashion mutually acceptable resolutions of problems raised by the fact situations described in the majority decision. The flexibility which collective bargaining affords would result in resolutions much to be preferred over that of this tribunal which, perhaps necessarily, subordinates practical considerations in favour of a determination as to whose definition of an "undertaking" shall prevail.

I am also of the view that the majority decision both here and in *Dunning Paving Limited* must not reflect the intent of the Legislators since their effect is to severely inhibit the ability of the Government to enter into and withdraw from various activities at times and under circumstances which, in the view of our elected representatives, best serve the public interest. Yet this will surely be the case since prospective purchasers or contractors from the private sector will be averse to acquiring obligations to a public service union along with the purchase or contract.

The anomalies created by the majority decision and pointed out by Mr. Filion and Ms.



Barker are indeed hypothetical in that they have not yet occurred but they are not abstract since the seasonal needs are of a recurring nature. The fact that employees could be frustrated in a wish to be represented by another union or no union, the fact that serious questions could arise as to the nature and extent of liabilities a "new" contractor might inherit from a prior (seasonal) contractor and the certainty that the Crown will be precluded from having the work accomplished at the lowest cost to the taxpayer, all strike me as compelling reasons for the Board to exercise its discretion in the form of a denial of these applications, thus effectively referring the matter back to the parties and the collective bargaining process. I would have so ordered and I would have granted Mr. Filion's request for reconsideration of *Dunning Paving Limited*.

---

**1468-88-R** United Brotherhood of Carpenters and Joiners of America, Local Union 27, Applicant v. 162706 Canada Inc., (**Eddie Bauer**), Respondent

**Certification - Construction Industry - Applicant seeking certification under construction industry provisions - Evidence showing only two employees in bargaining unit - Employees in question not performing construction industry work for majority of time on date of application - Majority of time test appropriate to assist in determining whether employee falls within a construction "craft" - Application dismissed**

**BEFORE:** *Louisa M. Davie*, Vice-Chair, and Board Members *J. Trim* and *C. A. Ballentine*

**APPEARANCES:** *N. L. Jesin* and *Robert Reid* for the applicant; *Joseph N. Tascona* and *Deborah B. Divis* for the respondent.

**DECISION OF THE BOARD;** October 18, 1989

1. This is an application for certification brought pursuant to the construction industry provisions of the Act. The parties disagree as to whether it has been *properly* brought under the construction industry provisions of the Act. The respondent asserts that it is not an employer in the construction industry. The applicant alleges otherwise. Intertwined with this issue is the dispute between the parties regarding the duties and responsibilities of the two employees whom the applicant claims are properly included in the bargaining unit for which it seeks certification. That unit is described in the application in the typical or usual manner and in conformity with section 144(1) of the *Labour Relations Act* ("the Act") as follows:

all carpenters and carpenters' apprentices employed by the employer in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario; and

all carpenters and carpenters' apprentices employed by the employer in Board Area 8 excluding the industrial, commercial and institutional sector, save and except non-working foremen, and persons above the rank of non-working foreman.

2. The respondent (Eddie Bauer) operates retail stores under the name of Eddie Bauer. On and about September 16, 1988, it caused to be constructed a retail store in the Fairview mall. That construction was generally performed through the engagement of various contractors. The focus of this case is whether the final installation and assembly of shelving and certain other store display units is construction work. Counsel for Eddie Bauer asserts that the shelving and display units are not "fixtures" but are merely chattels. He argues therefore that Eddie Bauer is not an employer in the construction industry. In so doing, he relies primarily upon *Disney Display*, [1986]

OLRB Rep. Feb. 236 and *Re Royal Bank of Canada and Saskatchewan Telecommunications* (1985) 20 D.L.R. (4th) 415 (Sask C.A.).

3. Counsel for the union on the other hand asserts that the various shelving and other display structures are affixed to the wall, must therefore be considered “fixtures” with the result that Eddie Bauer employees who assembled and installed those fixtures were employed in the construction industry by Eddie Bauer. Counsel for the union further asserted that although a portion of the display structures assembled on the date of application were admittedly free-standing display structures, the assembly and installation of those free-standing display structures had to be assessed in light of the other construction activities which occurred on September 16, 1988, the date of application. Counsel submitted that the Board ought to focus upon the fact that all of the activities of the persons directly employed by Eddie Bauer were performed upon a new construction site and not in a operating retail store. At the relevant time the store had not yet opened. Eddie Bauer through its own employees and by engaging various contractors was still in the process of “building” the store. He argued that had the assembly and installation of these shelving and other types of display units been part of the general construction contract it would undoubtedly have been considered construction work. The fact that it was not part of the general contractor’s construction contract, but was performed by Eddie Bauer employees therefore, should not make a difference in the determination that this was construction work. As a result, it was argued that Eddie Bauer was an employer in the construction industry. In support he referred to the decision of the Board in *Board of Education for the City of Windsor*, [1988] OLRB Rep. March 342 and the cases referred to therein.

4. In our view, in the circumstances of this case, we need not decide whether the final assembly and installation of these various display units is or is not work in the construction industry. Upon the evidence before us, it is clear that, even if this work was work within the construction industry, the only two persons whom the applicant asserts in the bargaining unit (and the only two persons on the employer’s schedule of employees) did not in fact perform that work for a majority of the time on the date of application. Therefore, assuming without finding that this work was work within the construction industry and that the application has been properly brought under the construction industry provisions of the Act, we propose to dispose of the application after reviewing the nature of the work performed by these two persons on the date of application.

5. Before so doing, we find it helpful to briefly review the Board’s jurisprudence in respect of the “date of application” and the “majority of time” tests employed by the Board. These tests were reviewed and subsequently applied in a recent decision of the Board, *Wraymar Construction and Rental Sales Limited*, [1989] OLRB Rep. June 682. There the Board stated:

10. In *E & E Seegmiller Limited*, *supra*, the Board reviewed, at paragraph 12, its then existing practice with respect to determining who is an employee in the bargaining unit for purposes of applications for certification in the construction industry:

In applications for certification in the construction industry, a person must be at work for the respondent employer on the date that the application is made in order to be included in the bargaining unit for the purposes of “the count” (see for example *Smiths Construction Company Arnprior Limited*, [1984] OLRB Rep. Mar. 521 among others). In addition to actually being at work, the employee must have spent a majority of his time on the date of application doing bargaining unit work (see for example *O. J. Jaffrey Limited*, [1964] OLRB Rep. Aug. 233; *Clairson Construction Company Limited*, [1968] OLRB Rep. April 126; *George and Asmussen Limited*, [1971] OLRB Rep. Oct. 683 among others). Where an employee was doing the work of one trade or craft on the date of application but prior thereto had been engaged in doing the work of several trades or crafts at the same wage rates, the Board has long been willing to examine a period of time prior to the date of application that is representative for pur-

poses of ascertaining what work the employee spends the majority of his/her time doing and so determine whether or not that employee should be included in the bargaining unit. The length of this “representative period” has heretofore varied on a case by case basis (see for example *Heath Construction Inc.*, [1977] OLRB Rep. 691; *J. M. Chartrand Realty Ltd.*, [1978] OLRB Rep. May 423; *Di Marco Plumbing & Heating Company Limited*, [1985] OLRB Rep. May 659; *Des-Build Development Limited*, [1983] OLRB Rep. Nov. 1793 among others). It has also been suggested that the Board may look to the primary reason for which the employee was hired in order to determine his/her classification (*Pre-Con Murray*, [1965] OLRB Rep. Jan. 1003) but this test has largely been used in the circumstances where the evidence of what the employee actually did does not answer the question of whether the employee should be included in the bargaining unit (see for example *Des-Build Developments Limited*, *supra* and *Dufresne Piling Co. (1967) Ltd.*, [1984] OLRB Rep. July 924). In summary, the Board has looked at the following criteria in making its determinations:

- (a) whether the person concerned was employed by the respondent and at work on the date of application; and
- (b) if so, the work that that person spent the majority of his/her time doing on the date of application; or
- (c) where, previous to the date of application, the person has been engaged in the work of more than one trade or craft and the work s/he performed on the application date does not accurately reflect the work s/he normally spends the majority of his/her time doing, the work done by that employee during the appropriate representative period prior to the date of application; or
- (d) where there is inconclusive evidence with respect to the work in which an employee has been engaged, any other relevant factor, including the primary reason for hire.

(See also *Gilvesy Enterprises Inc.*, *supra*, at paragraphs 16 and 17). The Board went on, at paragraph 23, to state that:

... However, it appears to us that recourse to a “representative period” has made the certification process in the construction industry less consistent, certain, and expeditious than it might be. The use of any such period is inconsistent with the requirement that a person be both employed by the respondent and at work on the date of application. The very nature of a “representative period” is such that its length will vary according to the circumstances of the particular application and creates uncertainty. Looking to a “representative period” overlooks the fact that once a trade union has been certified as bargaining agent for a bargaining unit of employees of an employer in the construction industry, any collective agreement to which that employer becomes bound, whether a provincial agreement or not, will apply to persons doing the work covered by that agreement. Consequently, whether or not an employee is covered by a particular collective agreement and represented by a particular bargaining agent depends on the work that s/he is doing at the time and is in no way dependent upon the work that s/he performed during any previous period. Further, the use of a “representative period” had tended to result in protracted and expensive proceedings before the Board. Because it is important that the Board’s policies and tests be consistent and create as certain, equitable, and expeditious a means as possible for ascertaining which persons are in a bargaining unit, and having regard to the nature of applications for certification in the construction industry, we take the view that the Board should eliminate its use of a “representative period” and restrict itself to the following criteria:

- (a) whether the person was employed by the respondent and at work on the date of application; and



- (b) if so, the work that that person spent the majority of his/her time doing on the date of application or
- (c) where there is no conclusive evidence with respect to the work that the employee performed on the date of application, any other relevant factor, including the primary reason for hire.

...

15. While it is possible for an employee to be employed in different bargaining units at different times, s/he can only be in one bargaining unit at any one point in time. As the *Gilvesy* test and that line of cases demonstrates, the Board has concluded that, for construction industry certification purposes, the date of application (which is "the time the application was made" for the purpose of section 7(1)) constitutes a single point in time. Consequently, an employee can only be in one bargaining unit for certification purposes. (As *Harnden & King Construction Ltd.*, [1987] OLRB Rep. Dec. 1510 (at paragraph 14) demonstrates, the Board has also arrived at this conclusion without reference to the *Gilvesy* test or that line of cases.) Pursuant to the *Gilvesy* test, the bargaining unit an employee is in, if any, is the one in which s/he spent a majority of his/her time in on the date of application. The Board is aware that this can result in some apparent anomalies. However, it is also the Board's experience that such anomalies do not arise very often. Further, any test employed by the Board in certification matters will be somewhat arbitrary and create some anomalies, particularly at its edges. The application of the "majority of time on the date of application" test to determine which individuals are employees in the bargaining unit in a construction industry application for certification reflects the Board's attempt to use as certain, equitable and expeditious a means as possible to ascertain who is in such a bargaining unit.

16. There remains to be determined, however, what is meant by the "majority" of time on the date of application. Should it mean that an individual must have spent more than 50% of his/her working time on the date of application in a bargaining unit in order to be included in it for certification purposes? Or should it mean that an individual will be considered to be in whichever bargaining unit s/he spends the most time in? If the first approach was adopted, an employee who worked at more than two kinds of work (or in more than two geographic areas) could work a full day but, having spent less than a majority of his/her working time at any one kind of work (or in any one geographic area), end up being in no bargaining unit for certification purposes. The undesirable result can be avoided if the second approach is adopted. Accordingly, and even though as with any test there may be other anomalies, we favour that second approach.

6. In the past it would appear that these tests have been employed only in the construction industry to determine into which of two craft units an employee falls. We were not referred to any decision of the Board where the majority of time test was employed to assist in the determination as to whether a person falls within a construction "craft" bargaining unit or a non-construction bargaining unit. In our view, application of the majority of time test is equally appropriate in these circumstances. In particular, we concur with the two observations of the Board in *Wraymar* that:

- (a) although it is possible for an employee to be employed in different bargaining units at different times, he/she can only be in one bargaining unit at any one point in time, and
- (b) that an individual should be considered to be in whichever bargaining unit he/she spends the most time in.

7. Not only would application of the majority of time tests in the present circumstances be consistent with the Board's general approach when dealing with applications in the construction industry, a similar, although perhaps not identical approach has been used by the Board in certain applications that do not relate to the construction industry. Thus, in the non-construction industry applications for certification, the Board has recognized that the employees of a particular employer may constitute more than one bargaining unit or potential bargaining units for purposes of collec-

tive bargaining. This, combined with a notion of the exclusivity of the trade union to act as bargaining agent for the employees has, for example, caused the Board in applications dealing with “occasional teachers” to enunciate a test focusing upon which, of two potential units, (whether the elementary or secondary school panel) an employee has the “greatest attachment”. Thus, in the *Board of Education for the City of Hamilton*, [1987] OLRB Rep. June 847, the Board stated at pp 849-850:

7. The employees of any particular employer may constitute more than one bargaining unit or potential bargaining unit for the purposes of collective bargaining. In the industrial context, for example, office and clerical employees are ordinarily regarded as forming an appropriate bargaining unit separate and distinct from the “plant” unit of employees engaged in production.

• • •

8. A bargaining unit comprises the employees for whom a particular trade union is to be the exclusive bargaining agent. The notion of exclusivity requires that bargaining units be so defined as to ensure that an employee falls within only one such unit at any particular point in time. Returning to the industrial example in which office and clerical employees are excluded from the unit into which plant employees fall, an employee may move back and forth between the office and the plant and so fall within the plant unit and the office unit at different times, but that employee cannot be in both units at the same time: see *Laurent Lamoureux Co. Ltd.* [1985] OLRB Rep. Nov. 1618 at paragraph 15.

• • •

9. In circumstances in which teachers receive a variety of teaching assignments in the course of a year, the application as of a particular date of the test propounded in *City of York Board of Education*, *supra*, can lead to the conclusion that the employee was in two or more bargaining units simultaneously on that date. The Board had to deal with this problem in *The Board of Education for the City of Scarborough*, [1987] OLRB Rep. Jan. 119. In that decision, the Board concluded that teachers who “ordinarily” acted as substitutes for secondary school teachers but “occasionally” worked in the elementary schools in the year preceding the relevant date, should not be regarded as falling within the bargaining unit of elementary panel occasional teachers as of that date. We take this to mean that when the application of the *York* test places a particular teacher in more than one existing or potential unit of teachers, that teacher will be treated as falling within the bargaining unit to which he or she has the greatest attachment as of that time, in terms of the relative quantities of work performed during the year preceding the relevant date in each of the bargaining units of teachers employed by the subject school board.

8. After considering the submissions of the parties and the Labour Relations Officer’s report in this matter, the Board finds that neither Mr. Gehman nor Mr. Male engaged in the assembly and installation of the displays for the majority of their time on the date of application. Mr. Gehman was the second Assistant Store Manager whose primary role throughout the day (September 16, 1988) was to assist in the supervision of the approximately thirty employees who were working in the store on that day in order to get the store “ready” for its opening. Mr. Male was the Quality Assurance Supervisor and Assistant Warehouse Supervisor who was also at the store for that purpose on that day. Neither Mr. Gehman nor Mr. Male spent more than one and a half hours of their work day (in the case of Mr. Gehman, a work day that lasted from 8:30 a.m. to 10:00 p.m.) in the assembly or installation of the display units. The remainder of their day was spent in floor supervision of the other employees, directing those other employees, receiving, unpacking and ultimately displaying the store merchandise upon the shelves and other display units. The evidence discloses that the majority of the time spent by these employees was in “setting up” the store with merchandise. The majority of time was not spent performing work within the bargaining unit sought by the applicant. Alternatively, it can be said that these persons have a “greater attachment” to a notional or potential non-construction bargaining unit.

9. In view of the fact that there were no employees employed within the bargaining unit sought by the applicant on the date of application, this application is hereby dismissed. In the result, the Board will not inquire further into the other matters and issues raised in this application for certification.

---

**1247-89-R; 1364-89-R** Labourers' International Union of North America, Ontario Provincial District Council, Applicant v. **M. Pickard Construction Co. Ltd.**, Respondent v. International Union of Operating Engineers, Local 793, Intervener v. Group of Employees, Objectors; International Union of Operating Engineers, Local 793, Applicant v. **M. Pickard Construction Co. Ltd.**, Respondent v. Labourers' International Union of North America, Ontario Provincial District Council, Intervener v. Group of Employees, Objectors

**Certification - Construction Industry - Natural Justice - Practice and Procedure - Union filing certification application on terminal date of prior application by different union - First applicant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application**

**BEFORE:** *R. A. Furness*, Vice-Chair, and Board Members *W. Gibson* and *C. A. Ballentine*.

**APPEARANCES:** *Jules Bloch*, *Gerry Varricchio*, *Steve Leitch* and *Keith Rimmington* for the Labourers' International Union of North America, Ontario Provincial District Council; *J. Liberman* and *M. Pickard* for the respondent; *Mary Hart* and *David Ottaway* for the International Union of Operating Engineers, Local 793; *Randy Johnston*, *Jim Cathrae* and *Andrew McCutcheon* for the objectors.

#### **DECISION OF THE BOARD; October 20, 1989**

1. The applicant in Board File No. 1247-89-R (the "first application") filed its application for certification on August 15, 1989, and the terminal date fixed for the first application was August 28, 1989. The applicant in Board File No. 1364-89-R (the "subsequent application") filed its application for certification on August 28, 1989, and the terminal date fixed for the second application was September 12, 1989.

2. It appears to the Board that employees affected by the first application are also affected by the subsequent application. Section 103(3) of the *Labour Relations Act* contemplates the situation which has arisen with respect to the first application and the subsequent application. The Board has normally applied the provisions of section 103(3)(a) where a subsequent application has been filed on or before the terminal date of the first application. The Board has normally applied the provisions of section 103(3)(b) where a subsequent application has been filed after the terminal date of the first application. This panel of the Board is unaware of any instances where the Board has applied the provisions of section 103(3)(c) in circumstances similar to the facts in these two applications for certification.

3. At the hearing, the Board invited the submissions of the parties with respect to the



application of section 103(3) to the circumstances of these two applications for certification. It was the position of counsel for the Labourers' International Union of North America, Ontario Provincial District Council (the "Labourers") and counsel for the respondent that if the Board applied the provisions of section 103(3)(a) the terminal date of the subsequent application ought to be the terminal date of the first application, namely, August 28, 1989. If this argument prevails, it would mean that the subsequent application would have both an application date and a terminal date of August 28, 1989. It was the position of counsel for the Labourers and the respondent that if the International Union of Operating Engineers, Local 793 ("Local 793") wanted to preserve the terminal date of the subsequent application, then Local 793 would have to have the subsequent application dealt with according to the provisions of section 103(3)(b). In the view of counsel for the Labourers and the respondent, the act of Local 793 in "sheltering" the subsequent application under the first application quite fairly led to the subsequent application having a filing date and a terminal date of August 28, 1989. Counsel for Local 793 argued that the subsequent application ought to be dealt with under the provisions of section 103(3)(a), that the application date of the subsequent application ought to be August 15, 1989, and that the terminal date of the subsequent application ought to be September 12, 1989.

4. The Board was not referred to any authorities for the positions argued by counsel for the Labourers and the respondent. In our view, the analogy of "sheltering" which may be appropriate in the context of a mechanic's lien action is not appropriate in the *Labour Relations Act*. The purpose of section 103(3) is to provide the Board which statutory authority for dealing with situations where two or more competing trade unions file their applications for certification within a certain band of time. Section 103(3) is not meant to confer advantages on the trade union which succeeds in filing its application before other trade unions to the extent of denying natural justice to the trade unions which file their applications for certification on a subsequent date.

5. If the Board were to accept the arguments of counsel for the Labourers and the respondent, the membership evidence filed by Local 793 would be rendered untimely and the statements of objection to the application for certification by Local 793 filed by objectors would also be rendered untimely. This would be the case even though Local 793 and the objectors had proceeded with the advice of the Registrar that the terminal date in the subsequent application was September 12, 1989. This panel is not aware of a single example where the Board has moved a terminal date forward in the manner suggested by counsel for the Labourers and the respondent.

6. In representational issues before the Board such as certifications and terminations of bargaining rights, the critical dates are the application date and the terminal date. Section 103(3)(a) permits the Board to "treat the subsequent application as having been made on the date of the making of the original application". However, section 103(3)(a) is silent on the terminal date. In our view, given the serious consequences of moving the terminal date forward, it would require clear and explicit language in order for the Board to adopt the argument of counsel for the Labourers and the respondent.

7. For the foregoing reasons, the Board treats the subsequent application as having been made on August 15, 1989, the date of the making of the original application pursuant to section 103(3)(a). Moreover, the terminal date of the subsequent application remains as September 12, 1989.

8. A Labour Relations Officer is authorized to inquire into and report to the Board on this list and composition of the bargaining unit.

---

**1374-89-R United Steelworkers of America, Applicant v. 445733 Ontario Ltd., c.o.b. as McLean Security, Respondent**

**Certification - Natural Justice - Practice and Procedure - Security Guard - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem**

**BEFORE:** *R. O. MacDowell*, Alternate Chair, and Board Members *D. A. MacDonald* and *C. A. Ballentine*.

**DECISION OF THE BOARD;** October 12, 1989

1. This is an application for certification. It is one of a series of similar applications in which the United Steelworkers of America seeks to represent security guards working in the Province of Ontario.

2. On September 21, 1989 the parties met with a Board Officer, in Ottawa, and settled all matters in dispute between them, other than what might be colloquially described as the "Charter issue". That issue concerns section 12 of the *Labour Relations Act* which reads as follows:

12. The Board shall not include in a bargaining unit with other employees a person employed as a guard to protect the property of an employer, and no trade union shall be certified as bargaining agent for a bargaining unit of such guards and no employer or employers' organization shall be required to bargain with a trade union on behalf of any person who is a guard if, in either case, the trade union admits to membership or is chartered by, or is affiliated, directly or indirectly, with an organization that admits to membership persons other than guards.

3. Section 12, on its face, prevents the United Steelworkers of America from representing security guards even though, as in the instant case, the majority of the employees have indicated their desire to be represented by the applicant union. The propriety of that limitation is being contested in a number of other cases currently before the Board. The union claims that this restriction on its members' freedom of association is contrary to the Canadian Charter of Rights and Freedoms. The parties in the instant case have concluded that this matter should be adjourned pending a resolution of the union's "Charter challenge" in those other cases.

4. This decision is not concerned with these matters of high principle or the constitutional validity of section 12 of the *Labour Relations Act*. We are here concerned with a more prosaic question: how do we best give notice to employees potentially effected by this certification application?

5. Security guards like those involved in this case, often patrol and protect the property of their employer's clients. They may not work on their employer's premises at all. Indeed, they may only occasionally visit their employer's premises for the purpose of picking up their pay cheques, receiving special instructions, or obtaining their work schedule for the next week(s). The place where they regularly perform their work is neither owned nor controlled by their employer. Accordingly, a posting on the employer's premises may not, in some cases, provide a timely notice of the union's certification application.

6. The union urges the Board to adopt a "policy" in all "guards" cases of requiring the employer's clients to post notices on *their* premises where they will come to the attention of the

guards potentially effected by the union's various applications. Further, the union asserts that, in each case, the Board should appoint a Labour Relations Officer to visit the location of each client to effect and monitor such posting. The Board has the power to do this pursuant to section 103(2)(d) of the *Labour Relations Act*:

103.- (2) Without limiting the generality of subsection (1), the Board has power,

- (d) to require persons or trade unions, whether or not they are parties to proceedings before the Board, to post and to keep posted upon their premises in a conspicuous place or places, where they are most likely to come to the attention of all persons concerned, any notices that the Board considers necessary to bring to the attention of such persons in connection with any proceedings before the Board.

7. We might note that the respondent employer in the instant case makes no such request, nor does it assert that its employees have not had adequate notice of this proceeding. No employee has complained about the adequacy of notice. Finally, although raising its general "concern", the union does not assert any facts concerning the work pattern of the employees *in this case* which would justify any departure from the Board's usual posting practice. The union merely asserts that there *might* be a problem, so the Board should take these extraordinary steps.

8. The Board has always recognized that in some employment situations special steps must be taken in order that employees will receive notice of certification proceedings. It does not follow, however, that it is necessary to authorize Labour Relations Officers to travel throughout Ontario posting notices on the premises of the employer's clients. Not only might that raise some difficult legal questions in respect of businesses not themselves covered by the *Labour Relations Act* (Embassies or buildings operated by the Federal Crown, for example), but it still would not insure that the guards would receive timely notice. Such approach would require a significant commitment of Board resources without a concomitant assurance that notice would be effected; moreover, as we have already pointed out, the "problem" raised by the trade union is, at this point (and despite many similar applications before the Board) entirely hypothetical.

9. We do agree, though, that a *potential* problem does exist and that where such problem is identified by either the union or a respondent employer, the Board should modify its general approach as it has done in the case of supply teachers who are called in on an irregular basis and move from school to school. There, too, employees have an irregular work pattern and no fixed place of employment so that postings may not come to their attention. In the case of occasional teachers the Board now routinely requires the employer to prepare and provide to the Board a list of addresses - usually on address labels - so that the Board can send notice, by mail, to the employees in the proposed bargaining unit. Notice by mail is also used in the construction industry where similar problems sometimes arise.

10. We therefore propose to adopt the following practice when dealing with applications regarding security guards. Where neither the trade union or employer raise any notice questions the Board will follow its usual practice, authorized by the Rules, requiring a posting on the employer's premises in such place or places where the notices will come to the attention of the employees affected by a certification application. Where employees regularly visit their employers office to pick up their cheques or receive instructions, that form of notice should be sufficient. However, where either the trade union or the employer identify a potential notice problem, the Board will direct the employer to supply the addresses of employees so that service can be effected by mail. This may entail an extension of the terminal date and some delay in processing the certification application, but, in all likelihood, the delay would be less than that involved in the approach suggested by the union, and the receipt of notice is more certain.



11. Having regard to the agreement of the parties this matter is adjourned pending a resolution of the "Charter issue" referred to above. If the union wishes to pursue its notice concern in this file, it should so indicate within twenty-one days of the release of this decision. It follows, of course, that if the union raises and the Board accepts its concerns about notice, at this stage, there would necessarily have to be an extension of the terminal date.

---

**0250-87-R United Brotherhood of Carpenters and Joiners of America, Local 27, Applicant v. Mollenhauer Limited, Respondent v. Labourers' International Union of North America, Local 183, Intervener #1 v. Metropolitan Toronto Apartment Builders Association, Intervener #2**

**Certification - Practice and Procedure - Pre-Hearing Vote - Representation Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair, and Board Members *D. A. MacDonald* and *P. V. Grasso*.

**DECISION OF THE BOARD;** October 23, 1989

1. Pursuant to the Board's September 13, 1989 decision herein, the applicant and the respondent have both made written submissions with respect to whether or not the Board should count the single ballot cast in the pre-hearing representation vote held in this application for certification.

2. The applicant submits that the ballot cast in this case should not be counted because there was only one person eligible to vote (that is, there was only one person in the bargaining unit at the times material to the vote) and because counting the ballot would obviously reveal how that person voted. The applicant submits that a further representation vote should therefor be held. The respondent does not oppose the applicant's request that the ballot not be counted but submits that there is no reason to hold a further vote and that the Board should dismiss the application.

3. In any application for certification, the Board must determine the unit of employees that is appropriate for collective bargaining and the number of employees in it. Both of those determinations are made as of the time the application was made (that is, the date of application). The Board must then determine the number of employees in the bargaining unit who are members of the trade union seeking certification at a subsequent time, namely the terminal date fixed for the application. The level of membership that an applicant trade union is able to demonstrate among bargaining unit employees dictates whether an application must be dismissed, whether there must be a representation vote, or whether the trade union is entitled to be certified as the bargaining agent of the employees in the bargaining unit (in the absence of circumstances in which the Board finds it appropriate to direct that a representation vote be taken notwithstanding that the applicant would otherwise be entitled to be certified without one). In applications (like this one) in which an applicant has requested a pre-hearing representation vote, the determination of the appropriate bargaining unit and the number of employees in it for purposes of the application are made after

that vote is taken but both of these determinations and the determination of the applicant's entitlement to that vote are made as of the date the application was made. The requirement that there be more than one employee in every bargaining unit which is the subject of an application for certification applies to the determination which must be made at the time the application was made. There is no requirement that there be more than one person in a bargaining unit at any other time.

4. Where a representation vote is held, only those employees eligible to vote may do so. In order to be eligible to vote, a person must have been an employee in a bargaining unit on the date the vote is ordered (or on the terminal date in case of a pre-hearing vote) and on the date the vote is taken, both of which dates are necessarily subsequent to the date of application. In *City Plumbing (Kitchener) Limited*, [1987] OLRB Rep. June 810, the Board was faced with an application for a declaration terminating bargaining rights in which the only person who was eligible to vote cast a ballot. In disposing of that application, the Board reviewed its practice in representation votes as follows:

5. The Board's practices with respect to voter eligibility in the representation votes that it directs be taken are well-established. It has developed a two-pronged voter eligibility rule based on two material dates; the date of the Board decision ordering the vote (or, on the terminal date fixed for a certification proceeding in which a pre-hearing vote has been requested) and the date the vote is taken. The object of the Board's practices is to provide certainty and finality in proceedings where representation votes are taken, and to reduce the likelihood of attempts to gerrymander the voters list in an effort to influence the outcome of a vote (see *London District Crippled Children's Treatment Centre*, [1980] OLRB Rep. April 461 and *Crowle Electrical Limited*, [1982] OLRB Rep. Oct. 1458).

6. The Board has also long recognized that there is a difference between employment in the construction industry and non-construction employment. A major difference between the two is that employment in the construction industry tends to be intermittent and transitory relative to non-construction employment. A great deal of construction work is seasonal or subject [to] interruption due to inclement weather. When they do work, construction employees tend to work in small crews and continuous employment with any given employer is often measured in weeks or months rather than years. In recognition of the differences between them, the Board has established a practice of approaching the two situations differently. For example, in both applications for certification and termination proceedings, the employer involved is required to file with the Board a list of employees in the bargaining unit so that the Board can, as it must, ascertain the level of employee support of the application before it. In proceedings relating to the construction industry, the Board counts only those persons actually at work in the bargaining unit on the date of application in determining the number of employees in the bargaining unit. In contrast, in non-construction proceedings, the Board does not require an individual to be at work in the bargaining unit on the date of application for purposes of the count so long as s/he was an employee in the unit on that day, and did actually work in it on at least one day in the thirty day period prior to and one day in the thirty day period subsequent to the date of application. Similarly, when a representation vote is held in the course of proceedings involving the construction industry, a person is entitled to vote if s/he was *at work in* the voting constituency on the date of the Board's decision directing the vote (or, where a pre-hearing vote is requested in a certification application, on the terminal date), and the day of the vote. In non-construction matters, on the other hand, an individual is entitled to vote if s/he was *employed in* the voting constituency on those two material dates. Being "at work in" the voting constituency requires an individual to be physically on the job. Being "employed in" the voting constituency does not require a person's physical presence at work so long as s/he has not been permanently removed from employment in the voting constituency. This distinction illustrates the Board's practice of focusing on specific dates in construction industry proceedings and on periods of time in non-construction matters, and it reflects the Board's attempt to accommodate the differences between the two employment situations.

7. Contrary to what counsel for the respondent suggests, so long as employment in the voting constituency is not terminated, in neither case does the Board require an individual to be at work in it for any minimum period of time, or at all, during the period between the two material

dates in order to be eligible to vote. It would be impractical and unrealistic to impose any such requirement. It is to be expected that some employees will not be at work, or if at work not be performing work within the voting constituency, during some part, or all, of the period between the date of the Board decision directing the vote (or the terminal date in the case of a pre-hearing vote), and the day the vote is taken. That is particularly true in the construction industry where the vagaries of employment are such that it is possible, even likely, that imposing a requirement that an individual perform work in the voting constituency during that intervening period would, in many cases, result in there being no one entitled to cast a ballot. The *Labour Relations Act* provides employees with an opportunity to join and be represented by a trade union in their employment relations with their employer, and also permits them to terminate that trade union's right to represent them, if they see fit to do so. It would be inappropriate for the Board to adopt procedures which would effectively deny either right. Furthermore, such a requirement could create uncertainty and invite protracted litigation, neither of which is desirable in labour relations matters, particularly those relating to representation rights.

8. The purpose of the Board's practices is to ensure that the persons affected by the outcome of a vote; that is, the employees in the bargaining unit affected, have an opportunity to participate in a representation vote where one is directed. To achieve that goal, the Board has formulated different approaches to employment in the construction industry and non-construction industry employment in response to the differences between the two employment situations. Some of those differences in approach have already been discussed. They are also reflected in the difference in the meaning that the Board has ascribed to the standard language it has long used to describe voter eligibility in representation votes in the construction industry compared to that in non-construction votes. In the result, in non-construction matters, a person need not be "at work in" the voting constituency at any time so long as s/he is "employed in it". In construction matters, the same eligibility terminology has been made equivalent to "at work in" so that a person must be at work in the voting constituency on both of the material dates; that is, the date of the Board decision ordering the vote (or the terminal date in the case of a pre-hearing vote), and the day the vote is taken in order to be eligible to vote (see *Crowle Electrical Limited*, *supra*). This reflects the Board's attempt to strike a balance between the vagaries of employment in the construction industry and the object of affording affected employees an opportunity to vote.

[emphasis supplied]

It is evident that the Board's comments in that case, with which we agree, were directed at both termination and certification proceedings.

5. On occasion, a representation vote is taken in which one or more persons whose entitlement to vote is challenged cast ballots. The ballots cast by such persons are sealed and segregated from the rest of the ballots. The parties may agree to have the non-segregated ballots counted prior to any determination of the right of those persons who cast segregated ballots to vote. In some such cases, an equal number of votes have been cast in favour of and against the applicant trade union. In such circumstances and where there is a single segregated ballot cast by a person who is subsequently found to have been entitled to vote, the Board's general practice is to direct that a new vote be taken so as not to reveal how that person voted (see *Omstead Foods Limited*, [1987] OLRB Rep. Feb. 264; *SGS Supervision Services Inc. Qualitest Technical Division*, [1981] OLRB Rep. Oct. 1471). This practice of counting the non-segregated ballots is premised upon the agreement of the parties which is made with a knowledge that they are taking an (avoidable) risk that a further vote may have to be held. In our view, that situation is both anomalous and distinguishable from the one before the Board in this case.

6. In any case in which the voting constituency is small or where a small number of ballots is cast, there is some danger that counting the ballots will reveal how those who cast them voted. For example, if only two people are eligible to vote (or only two people cast ballots) there is a fifty per cent chance that both voted the same way and that that will be disclosed when the ballots are counted. Similarly, if three people are eligible to vote (or only three people cast ballots) there is



twenty-five per cent chance of such disclosure, if four people are eligible to vote (or only four people cast ballots) there is a 12.5 per cent chance of such disclosure, and so on. It is only when eight people are eligible to vote (or only eight people cast ballots) that there is a less than one per cent chance that they will vote in a manner such that how they voted will be revealed. (We also observe that in circumstances where non-segregated ballots are counted and the margin of votes between the options with respect to which the vote was held is less than the number of segregated ballots cast by persons who are subsequently found to have been entitled to vote, it is possible that the way they voted will be revealed.) The vagaries of employment in the construction industry are such that it is not uncommon for there to be fewer than eight people in a voting constituency or for fewer than eight people to cast ballots in a vote. There is nothing in the legislation or otherwise which requires either that more than one person be eligible to vote or that more than one ballot be cast before a representation vote is "valid". While revelations of the manner in which any person has voted should be avoided if possible, secrecy of the ballot box should not be made an absolute objective. Nor, in the Board's view, should such secrecy take precedence over the right of employees to choose to be or not to be represented by a trade union and to express those wishes in a representation vote. Such questions are best answered by those eligible employees who decide to cast ballots.

7. For the foregoing reasons, the Board is satisfied that, except in cases where it is appropriate to apply the "build-up" principle (which, pursuant to section 119(2) of the Act, the Board is specifically authorized to disregard in the construction industry), the fact that only one person is eligible to vote, or that only one person has cast a ballot, will not, by itself, cause the Board to either defer the taking of a representation vote, or to hold a further such vote if one has already been taken. There is nothing in the mere fact that only one person was eligible to vote or only one person voted which, by itself, "invalidates" a representation vote. Nor is the Board persuaded that there is anything in the circumstances of this case which should cause it to refrain from counting the ballot cast.

8. The Board therefore directs that the ballot box be unsealed and the ballot cast in this application for certification be counted, and that the applicant and respondent be advised of the results of the vote in accordance with the Board's Rules of Procedure.

---

**3109-88-R; 3120-88-R** International Brotherhood of Electrical Workers, Local 353, Applicant v. P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited, Respondent v. Group of Employees, Objectors; I.B.E.W. Construction Council of Ontario, International Brotherhood of Electrical Workers, Local 105, International Brotherhood of Electrical Workers, Local 353, Applicants v. **P & M Electric Limited**, Pomico Holdings Inc., P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited, Respondents

**Certification - Petition - Practice and Procedure - Reconsideration - Timeliness - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely *prima facie* evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair, and Board Members *W. N. Fraser* and *H. Kobryn*.

**APPEARANCES:** *S. B. D. Wahl*, *M. Oram* and *Robert Parker* for the applicant; *Stephen A. McArthur*, *Boyd Pollock* and *Brian Loewen* for the respondents; *W. Dermody* (on July 20, Sept. 21, 22, 1989 only), *Leo DiTomaso* and *Jason Longworth* for the objectors.

**DECISION OF THE BOARD;** October 17, 1989

1. Pursuant to the Board's decision dated June 7, 1989, the hearing with respect to these applications continued on June 12, 1989. At the hearing, the group of objecting employees, represented by *Leo DiTomaso*, sought reconsideration of the Board's finding, at paragraph 16 of the June 7, 1989 decision, that three of the petitions filed in opposition to the application for certification were untimely. They asserted that two of these three petitions had in fact been mailed to the Board by registered mail on April 3, 1989, the terminal date fixed for the application, notwithstanding that neither of the envelopes relating to the two petitions in question bears a postal stamp for a date earlier than April 4, 1989. The group of objecting employees produced one receipt containing a handwritten note to that effect, which note they asserted had been written by a "postal clerk".

2. The applicant argued that the Board should accept the envelopes on their face and refuse to hear any "extrinsic" evidence suggesting that they, and the petition each contained, had been registered earlier. It submitted that "the time it is mailed", for purposes of section 75(1) of the Board's Rules of Procedure, is the date on which a postal stamp indicates it was mailed.

3. Section 75(1) of the Board's Rules of Procedure provides that:

75.-(1) Where a document is required to be filed by these Rules, filing shall be deemed to be made,

- (a) at the time it is received by the Board; or
- (b) where it is mailed by registered mail addressed to the Board at its office at 400 University Avenue, Toronto, Ontario, M7A 1V4, at the time it is mailed.

It refers to the fact of a document being received by the Board or mailed to it by registered mail. It contains no deeming provision of any kind. (The only deeming provision in the Act with respect to the mailing of material to the Board is in section 113 which does not apply to the circumstances herein except, perhaps, by an analogy.) Consequently, the Board must concern itself, for the purpose of determining the timeliness of any documents (like petitions and membership evidence), with when in fact they were either received by the Board or sent to it by registered mail. In our view, the evidence which the objecting employees sought to adduce in support of their request for reconsideration is extrinsic evidence only in the sense that it is evidence other than that which is contained on the face of the relevant documents. It is not extrinsic evidence in the sense that it relates to the construction to be given to them. Rather, it relates to the material fact of when the petitions were mailed by registered mail and is, as such, relevant and admissible.

4. As Board Practice No. 17 indicates, the Board will reconsider a decision if the party requesting it proposes to adduce new evidence which it could not, with the exercise of due diligence, have obtained previously and that new evidence would be virtually conclusive of an issue of substance; or if a party wishes to make representations it had no previous opportunity to make (see also, for example, *The London Soap Company Limited*, [1987] OLRB Rep. Feb. 241; *Capital Construction Corporation*, [1988] OLRB Rep. Aug. 747). In our view, the evidence and representa-

tions which the objecting employees sought to present were on an issue of substance which they had not previously had an opportunity to address.

5. Consequently, the Board ruled (orally) that the objecting employees would be permitted to lead evidence with respect to the mailing of the two petitions in question in support of their request for reconsideration.

6. The objecting employees did not have the evidence in question available at the hearing on June 12, 1989. The applicant opposed any adjournment to permit them to obtain that evidence on the basis that the objecting employees had known that the two petitions in question appeared to be untimely since late April 1989 (having been so advised by the Registrar), and should therefore have come to the hearing prepared to proceed. We note that while the law is the same for everyone, Mr. DiTomaso is not a lawyer and he may not have understood that it was important to raise the question of the timeliness of the two petitions when the matter first came on for hearing on May 25, 1989. We also note that the Board did not deal with the petitions at the May 25, 1989 hearing and Mr. DiTomaso did raise the matter at his first opportunity after receiving the Board's June 7, 1989 decision. Further, the status of the two petitions in question was of primary importance to the application for certification in that if they were found to be timely, the Board would have to inquire into their voluntariness and possibly into the applicant's request for relief under section 8 of the *Labour Relations Act*. If they were found to be untimely, the applicant would be entitled to be certified subject to the disposition of the application under sections 1(4) and 63 of the *Labour Relations Act* and the concomitant determination of the name of the respondent in the application. Finally, the delay occasioned by an adjournment was only three days and would not, by itself, cause any significant delay in the proceedings. In all of the circumstances, the Board found it appropriate to adjourn the hearing until June 15, 1989, a date already scheduled therefore, and ruled that it would hear the evidence and representations of the parties with respect to the objecting employees' request for reconsideration, and, if the Board was able to dispose of that matter that day, with respect to the remaining matters in issue in these proceedings.

7. After hearing the evidence and representations of the parties with respect to the request for reconsideration, the Board ruled (orally), for reasons which follow, that it would allow the request. Accordingly, the Board varied paragraph 16 of its June 7, 1989 decision herein by ruling that five petitions, bearing fifteen signatures in all, had been filed in a timely manner. Of these, eight signatures were of employees in the bargaining unit and three of them were of employees who had previously signed an application for membership, and paid \$1.00 with respect thereto, in the applicant. For the reasons previously given in paragraph 16 of the June 7, 1989 decision, the petitions were therefore relevant to the Board's considerations in that if they were proved to be voluntary it would normally (and in this case subject to the request for relief under section 8 of the Act) raise sufficient doubt concerning the continued support enjoyed by the applicant to cause the Board to exercise its discretion under section 7(2) of the Act to direct that a representation vote be taken in this matter.

8. The Board heard testimony from two employees of mail contractors of Canada Post and who, in effect, act as postal clerks. They testified with respect to the circumstances surrounding the mailing of the two petitions in question: one with respect to each petition. It was clear from their evidence that a postal registration stamp does not necessarily indicate when a document became mail within the possession, power or control of the Canada Post Corporation. This is because it is Canada Post's inflexible policy to require that its mail contractors change the date on registration stamps to the following day after the last pick-up of registered mail is made by Canada Post from the postal sub-station operated by the mail contractor, even though the mail contractor may continue to accept registered mail for some time after the last pick-up on that day. Consequently, if



the last daily pick-up for a particular location is 3:15 p.m. but the mail contractor remains open thereafter, registered mail received prior to 3:15 p.m. is stamped with that day's date, but registered mail received after 3:15 p.m. is stamped with the date of the following day. The evidence established that once an envelope is accepted by a post office or postal sub-station, the party who has "mailed" it cannot get it back. It also revealed that the time of the final pick-up from a postal sub-station is determined by Canada Post and that the schedule with respect thereto is changed from time to time. Finally, the evidence clearly established that each of the petitions in question were actually delivered to and received at a postal sub-station on the terminal date fixed for this application after the last Canada Post pick-up of the day for each sub-station. The prescribed registration fee was paid for each and each had a registration stamp applied to it and was entered onto the registered mail list on the terminal date, but the registration stamp bore the following day's date.

9. Section 2(1) of the *Canada Post Corporation Act* R.S.C. 1985 ch. c-10 provides that:

"mail" means mailable matter from the time it is posted to the time it is delivered to the addressee thereof;

"mail contractor" means a person who has entered into a contract with the Corporation for the transmission of mail, which contract has not expired or been terminated;

"mailable matter" means any message, information, funds or goods that may be transmitted by post;

"post" means to leave in a post office or with a person authorized by the Corporation to receive mailable matter;

"post office" includes any place, receptacle, device or mail conveyance authorized by the Corporation for the posting, receipt, sorting, handling, transmission or delivery of mail;

"transmit by post" means to transmit through or by means of the Corporation;

In addition, section 2(3) of the legislation provides that:

For the purposes of this Act, a thing is deemed to be in the course of post from the time it is posted to the time it is delivered to the addressee or returned to the sender thereof.

The regulations under the *Canada Post Corporation Act* provide that mailable matter shall be accepted for registration upon the payment of the prescribed fee therefore.

10. In our view, whether or not a document has been mailed to the Board by registered mail should not depend upon the vagaries of Canada Post's policies or schedules. Consequently, while a postal registration stamp is generally an acceptable indication of the date on which the document has been mailed, and this device is one of great convenience to the Board and to parties before it, it is no more than *prima facie* evidence of when a document has been sent by registered mail. As such, it can be rebutted by presenting appropriate cogent evidence to the contrary (see *3-L Filters Limited*, [1985] OLRB Rep. March 431; *Riverside Hospital of Ottawa*, [1983] OLRB Rep. Sept. 1562; *Hoffman Concrete Products Limited*, [1976] OLRB Rep. Feb. 35).

11. In this case, the two petitions were each actually deposited with persons authorized by Canada Post to accept them as registered mail on its behalf, which persons did actually accept them and the prescribed payment for the registered thereof, and caused them to be "registered" on April 3, 1989, the terminal date fixed for this application. In our view, that constitutes mailing by registered mail within the meaning of the Board's Rules of Procedure. Accordingly, we con-

cluded that the two petitions in question had been filed with the Board in a timely manner and we found it appropriate to reconsider our findings in paragraph 16 of the June 7, 1989 decision herein.

12. The Board then heard the evidence and representations of the parties with respect to the timely petitions filed in opposition to the application for certification herein and the applicant's request for relief under section 8 of the Act.

13. We note that the objectors retained counsel, Mr. Dermody, part way through this proceeding. He appeared before the Board on their behalf for the first time on July 20, 1989. At that time, he requested an adjournment for that and the following day because he was unavailable as a result of other commitments. He advised the Board that he had tried to obtain other counsel for the objectors but had been unable to do so. The objectors had not sought counsel at all until some two weeks after the last day of hearing (on June 15, 1989), and two weeks before the July 20, 1989 hearing date when the request was made. They had been aware, as had all the parties, of the dates scheduled for hearing, including July 20 and 21, 1989, since late April 1989. The applicant opposed an adjournment.

14. It has long been recognized that labour relations delayed are labour relations defeated and denied (see *Journal Publishing Co. of Ottawa Ltd. et al. v. Newspapers Guild, Local 205, OLRB et al.*, March 31, 1977, Ont. C.A., unreported; *Teledyne Industries Canada Limited*, [1986] OLRB Rep. Oct. 1441). This is especially true in representation proceedings like these. The Board is the master of its own practice and procedure. In that respect, its discretion to grant an adjournment or not is a broad one. It is the well-established and known practice of the Board to grant adjournments only on consent of all parties or where it is satisfied that there are exceptional extenuating circumstances. A party which has had adequate notice of a hearing does not have a right to have it adjourned for the convenience of itself or its representative (*Re Flamboro Downs Holdings Ltd. and Teamsters Local 1879* (1979) 24 O.R. (2d) 400 (Div. Ct.)).

15. In the circumstances of this proceeding, the Board determined that it was not appropriate to adjourn the proceedings in the absence of consent from all parties and the objectors' request for one was therefore denied. (We note that as it turned out, Mr. Dermody did participate in the proceedings on behalf of the objectors until late in the day on July 20, 1989, and also on September 21 and 22, 1989. He did not appear at all on July 21, 1989 and Mr. DiTomaso acted as the objectors' representative on that day.)

16. We wish also to note that after lunch on September 22, 1989, the applicant closed its case, and the respondent and objectors elected to call no reply evidence. Counsel for the respondent and the objectors both indicated that they would prefer not to proceed directly to argument because they wanted time to review the evidence which had been presented to the Board. When the Board expressed some concern with the fact that the next certain available hearing date was December 8, 1989, some two and a half months later, both counsel indicated their willingness to submit written argument. Counsel for the applicant opposed any delay and submitted that the Board should proceed with the case. We agreed. In the absence of any agreement of the parties, the Board will normally expect the parties to proceed to argument immediately upon the completion of the evidence, particularly where, as here, there is a full half day of hearing left, where the matter before is a representation proceeding, and the next hearing date does not follow closely. Consequently, the Board adjourned for half an hour to permit counsel to gather their thoughts and proceeded to argument.

17. In the course of five days of hearing with respect to the petitions and the applicant's section 8 request, the Board heard testimony from nine witnesses. The objectors called five witnesses with respect to the petitions: Gord Cook, Leo DiTomaso, Jason Longworth, Tom Mac Aleese and

Warren Honybun. In the course of their testimony, it was revealed that Cook sent in a petition, DiTomaso sent in a petition, Longworth and Mac Aleese sent in a joint petition, and Honybun and John Lovnicki sent in a petition which contained their and a number of other signatures. The applicant called two witnesses (Ross Mancini and Gavin Dunn) in that respect and with respect to its request for a relief under section 8. The respondent called two witnesses, Sam Dellaventura and Len Boone. The Board heard evidence about Boyd Pollock, a principal of the respondent P & M Electric (1982) Ltd. ("P & M"), and John Lovnicki, a fifth year apprentice about whom we will have more to say later. However, the Board did not have the benefit of the testimony of either of these two gentlemen.

18. The Board was particularly impressed with the evidence of Ross Mancini. He was clear, candid, and forthright in his testimony. He readily acknowledged when he was unable to recall what had occurred. He was not seriously challenged in cross-examination on those things material to the issues before the Board which he did recall. Accordingly, where there is a conflict between the evidence given by Mancini and that of any other witness, we prefer that of Mancini. At the other extreme, the testimony of Sam Dellaventura, P & M's general supervisor (or non-working foreman) was inconsistent with that of other witnesses and with documentary evidence before the Board. We find ourselves constrained to give no weight to his evidence except where it is corroborated by other cogent evidence.

19. The evidence reveals that these proceedings are merely the most recent chapter in the history of attempts by the applicant and Local 105 of the International Brotherhood of Electrical Workers ("Local 105") to organize the construction journeymen and electrician apprentices employed by P & M. Most recently, an application for certification by the applicant was dismissed after a representation vote was taken (Board File No. 2975-87-R, decision dated August 23, 1988, unreported). The evidence also reveals that this application was the subject of some discussion among the affected employees on the respondent's job site at a high-rise residential condominium apartment project in Mississauga known as the "Platinum", and that the lines were fairly clearly drawn in terms of the employees who clearly supported the application and the employees who clearly opposed it. Not all employees fell squarely within one or other of these groups however.

20. DiTomaso was the chief employee spokesperson for the objectors herein. He had been involved with a petition filed in opposition to the application which was dismissed in August 1988 as aforesaid. DiTomaso is a journeyman electrician. He has been employed by P & M for over sixteen years, the last five (approximately) of which he has been a working foreman. As such, he has been, and was at all material times, responsible for directly supervising the work of a crew of three to five men doing electrical work. Notwithstanding the assertions that all working men are equal, however, it is evident that some are more equal than others. For example, not all working foremen were, or are, paid at the same rate. Further, at the time the application was made, DiTomaso was, in effect, the "head (working) foreman" at the Platinum job site. As such, he clearly had greater control and responsibility for that project than other working foremen, like for example, Ross Mancini. DiTomaso exercised some supervisory powers over all of the respondent's employees on the Platinum job site, filled out the time sheets for all such employees (including the other working foremen), and the project was generally known as "Leo's (DiTomaso) job".

21. DiTomaso testified that after Christmas, 1988 he detected a feeling of discontent among the respondent's employees and that "suddenly" there was "talk of union" on the job. Some time later, the applicant began the organizing campaign which led to the application for certification herein. DiTomaso had opposed the application which had been dismissed in August 1988 as aforesaid. In fact, he signed a petition opposing it. Notwithstanding that, he signed an application for membership in Local 105 (which has submitted in support of an application for certification which



is not before us). DiTomaso testified that he thought about what he was doing before he signed that card, but that he then had second thoughts and began to write a petition indicating his opposition to the application. Yet he then proceeded to sign an application for membership in the applicant on March 29, 1989. This second card has been submitted by the applicant in support of its application for certification herein. After signing that second card, DiTomaso completed his petition opposing the application.

22. DiTomaso testified that he had discussed his concerns about whether he was doing the right thing in joining the union with Cook prior to April 3, 1989. These conversations took place on the job site and in the course of one of them DiTomaso and Cook admitted having signed union cards to each other. Cook also signed two cards. Like DiTomaso, he said that he signed the second one (which has been submitted in this application) after he had decided that he did not want to be a member of a union. In spite of his purported decision in that respect, he did not even begin to write his petition until several days later, on April 3, 1989, after a telephone conversation with DiTomaso on April 1 or 2, 1989 and several conversations with him at work on April 3, 1989. There is no evidence before the Board that DiTomaso had any discussions with any other of the respondent's employees about a petition prior to April 3, 1989.

23. On April 3, 1989, however, DiTomaso approached a number of employees. In the course of that day, DiTomaso spoke with Cook, Longworth, Mac Aleese, and Dunn, both about his petition and about how they could send a petition in. With the exception of Lovnicki, there is no evidence that DiTomaso spoke to any other employee on that day about a petition.

24. Lovnicki was not working at the Platinum job site but at another one known as the "Park Mansion" job. However, he appeared at the Platinum site some time during the morning of April 3, 1989. He brought with him a petition and spoke to at least DiTomaso and Cook about it. We know little else of Lovnicki's activities on the Platinum job site that day. However, we do know that DiTomaso, apparently in Cook's presence, suggested to Lovnicki that he take his petition and leave because if he obtained signatures on it, it would be "illegal" and would not be accepted by the Board. This is somewhat curious in light of the discussions which DiTomaso himself pursued on the job site that day.

25. Longworth, Mac Aleese, and Dunn were all on Mancini's crew. It is not clear whose crew Cook was on at the time, but it may have been Mancini's. At it happened, however, DiTomaso was the only working foreman, and the only journeyman electrician, on the Platinum site on April 3, 1989, Mancini and Mark Fearon having been sent elsewhere (of this we would have more to say later). DiTomaso spoke to Cook, Longworth, Mac Aleese and Dunn both individually and in groups of various configurations and by the end of the working day he had spoken to each of them three or four times. On the evidence, all of these discussions took place in whole or in part during times when the employees were expected to be working. He testified that he wanted to talk to them about his petition because his decision to send it was not irrevocable and he wanted their views on it, and because he wanted to assure them that he wasn't "going against them", just the applicant. We find it significant that each of the four employees responded by asking how he could send in a similar petition. We also find it significant that DiTomaso went beyond his stated purpose in talking to them; far beyond considering what he had said to Lovnicki.

26. DiTomaso advised each of Cook, Longworth, Mac Aleese, and Dunn to read the "green form" (green being the colour of Board Form 76, Notice to Employees of Application for Certification, Construction Industry). He went on to tell them that a petition had to be in writing, that it had to be sent to the Board by registered mail, and that it had to be sent in that day.

27. DiTomaso went even further. He told the employees that the respondent would not

penalize anyone who signed a petition (or a “retraction” as he referred to it) and that he would put his job on the line for those employees who had signed union cards but changed their minds and sent petitions in in the event that the P & M took any action against them. In addition, we accept Dunn’s assertion that DiTomaso suggested that if the application went to a hearing before the Board, Pollock (that is, the respondent) would find out who supported the union and who did not. When asked whether DiTomaso said anything on April 3, 1989 to indicate how the respondent would react to employees who sent in a petition, Dunn testified that “I guess that if you signed [with the union] and sent in a [petition] letter, the company would not punish you as much as if you had not done anything”. Upon considering his testimony as a whole, together with Mac Aleese’s testimony to the effect that the question of retaliation by the respondent was the “topic of the day” on April 3, 1989, we are satisfied that Dunn used the words “I guess that” as a superfluous figure of speech and that he was not guessing but rather testifying to what he in fact recalled. We note also that he was not cross-examined on that statement.

28. A possibility of a “house union” as an alternative to the applicant, and the likelihood that the employees would not be able to continue to work for the respondent after the present projects in Board Area 8 were finished if the applicant was certified by the Board were also raised by DiTomaso in his discussions with Cook, Longworth, Mac Aleese and Dunn.

29. In the course of the day, DiTomaso also *directed* at least Longworth, Mac Aleese and Dunn to go to the respondent’s site trailer where the green form was posted and to read it, again during their regular working hours. They and Cook all did in fact do so. DiTomaso even met with them at the trailer and he read the green form, or parts of it, to the four employees, showed them his own petition, and then left three of them (Cook had left) alone in the heated part of the trailer (which was the only heated facility of the respondent’s on the job site) while he stood and waited outside the door. When a number of other employees, who DiTomaso identified as supporters of the applicant, appeared and sought to enter the trailer, DiTomaso prevented them from doing so and peremptorily ordered them back to work.

30. We return now to Mancini’s absence from the Platinum job site on April 3, 1989. We accept Mancini’s testimony, which was neither seriously challenged on cross-examination nor contradicted by any other evidence, and find that Pollock telephoned Mancini at home on Sunday, April 2, 1989. Pollock asked Mancini if he knew anything about the applicant’s organizing campaign, and said that he couldn’t understand how “this” (the applicant’s campaign) could get started at the Platinum site with Mancini and DiTomaso there. Pollock asked Mancini if he had signed a union card and when Mancini declined to tell him, Pollock said, in effect, he knew he had. Pollock then advised Mancini of some difficulty with an elevator at the “Consulate”, a project which had been completed, and told Mancini to report for work there on April 3, 1989 to attend to the problem.

31. In fact, Mancini, Fearon and another employee did go to the Consulate on April 3, 1989. They spent the whole morning roughing in a “small site office” while waiting for Dellavventura to arrive with the equipment necessary for them to begin to deal with the problem. They spent the rest of the day pulling wire and trying to locate the source of the problem.

32. The evidence raises a number of questions. Why did DiTomaso find it necessary to obtain Cook’s view of his petition and to explain what he was doing on April 3, 1989, when he had done just that by telephone on April 1 or 2, 1989? Why did he suddenly have the urge to also approach Longworth, Mac Aleese and Dunn on April 13, 1989? There is nothing in the evidence which suggests that DiTomaso was friendly with them either at work or socially, or that he had any other reason to explain himself or seek the counsel of those three employees. And why did DiTo-



maso select and seek out those employees and no others? Even if there was some reason which the evidence does not reveal, or no reason as such at all, why did DiTomaso find it necessary to approach Cook, Longworth, Mac Aleese, and Dunn three or four times each? Why did DiTomaso specifically tell those four employees, not only to read the green form, but specifically what they had to do to send in a petition? Why did DiTomaso direct them to, and meet with them, in the respondent's site trailer - all of which took place during regular working hours? If all he wanted to do was to explain his actions and seek advice, why did DiTomaso go on to raise the spectre of retaliation by the respondent, the likelihood of the respondent learning which employees supported the applicant and which didn't, and promise to put his own job on the line for employees who signed the petition and thereby put into question their previous support for the applicant? Why did DiTomaso (and Cook) discuss petitions at all on the job site and during regular working hours in view of his (and Cook's) apparent belief that it was "illegal" to do so? Why did Cook, Longworth and Mac Aleese suddenly begin to write petitions after DiTomaso approached them as aforesaid on April 3, 1989? Although Cook testified that he had decided to send in a petition prior to April 3, 1989, there is no evidence that he had taken any steps to do so prior to being spoken to by DiTomaso on April 3, 1989. Indeed, the evidence suggests the contrary. There is no evidence to suggest that Longworth or Mac Aleese had given *any* consideration to sending in a petition before they were approached by DiTomaso on April 3, 1989.

33. The general certification process in Ontario is well-established and has been described by the Board in numerous previous decisions (see paragraph 16 of the Board's June 7, 1989 decision herein and also *The London Soap Company Limited*, [1987] OLRB Rep. Feb.. 241 at paragraph 12; *Famz Foods Limited*, [1985] OLRB Rep. June 857 at paragraphs 10 to 14; *Unlimited Textures Company Limited*, [1984] OLRB Rep. Jan. 138 at paragraphs 15 to 17). It is well settled that a petition filed in opposition to an application for certification must be voluntary (in the sense of being signed free of any improper influence) expression of the wishes of the employees who signed it before the Board will give any weight to it. The onus is on the employee(s) putting a petition forward to adduce sufficient evidence of its origination and circulation to satisfy the Board that those who signed it were exercising a free choice when they did so.

34. Because of the manner in which the certification process is structured, it is only those employees who had previously signed a piece of membership evidence filed in support of an application whose signatures on a petition are relevant to the Board's assessment of employees support for the application. Although aware that employees can and do change their views with respect to the desirability of trade union representation, the Board will carefully examine such apparent changes of heart where they follow, as they inevitably do, hard upon the heels of a decision to join a trade union. Before giving any weight to petitions which purport to indicate such changes of heart, the Board must be satisfied that they were voluntary and not motivated or influenced by any actual or perceived threat to job security, a concern that the employer is involved with the petition, or a concern that failure to sign a petition could result in reprisals.

35. In real life, people do not make decisions in sterile or laboratory conditions. Like it or not, pressure is a part of day-to-day life and most decisions, especially significant ones, are made under pressure, sometimes severe pressure. Peer pressure is naturally present in any union organizing campaign and salesmanship is often engaged in by both those who support and those who oppose an application for certification. However, in considering whether a petition is voluntary, the Board will distinguish between peer pressure and salesmanship, and undue or improper pressure or coercion. Employees are not entitled to decide whether or not to sign a petition entirely free from pressure. However, they do have a right to make such a decision free from any improper direct or indirect pressure, however subtle.



36. As the Board observed in *Markham Hydro-Electric Commission*, [1984] OLRB Rep. Oct. 1481, most “non-union” employers prefer to stay that way and their employees know it. Because of this and the nature of the employment relationship itself, the Board tends to view with suspicion any actual or perceived involvement of an employer with a petition.

37. An employer is entitled to not want its employees to be represented by a particular or any trade union. An employer is entitled to dislike a particular or any trade union. Similarly, an employee is entitled to like or dislike, or want or not want to be represented by a particular or any trade union. However, an employer is *not* entitled to choose or determine whether any of its employees will be represented by a particular or any trade union. An employer is *not* entitled to do anything which will directly or indirectly impinge upon the freedom which its employees enjoy under the *Labour Relations Act* to choose whether or not they, as a group, wish to be represented by a trade union. Nor can an employee act in a manner which suggests that the employer is involved with the petition or will become aware and be displeased with employees who do not oppose an application for certification.

38. Very often, the Board will not have direct evidence of improper conduct in connection with a petition filed in opposition to a certification application. That may be because there wasn’t any. Unfortunately, it may also be for other reasons, including that the material facts may not be within the knowledge of those not directly involved, that such direct evidence is not put before the Board. It is not common for those guilty of improper conduct in certification proceedings to admit to it. Consequently, the Board gives close scrutiny to evidence of the origination and circulation of petitions in order to ascertain whether any inferences which can properly be drawn from the evidence before it suggest that any petition before it is not voluntary. In doing so, the Board employs an objective test.

39. Non-working foreman are usually excluded from a construction industry bargaining unit. As their title suggests, working foremen work with the tools but also exercise some supervisory responsibilities over other employees. However, working foremen are generally included in the construction industry bargaining unit unless they have some overall project responsibility or have the power to affect the employment of others. In many ways, the position of working foreman is the construction industry equivalent to the industrial leadhand position. Because employees in such positions tend to have a special relationship or proximity to the employer which sets them apart from other employees, the Board will carefully examine the participation of a working foreman in a petition (see *Burl-Oak Paving Ltd.*, [1987] OLRB Rep. Apr. 474; *Action Electrical Ltd.*, [1989] OLRB Rep. Feb. 79). We note that a working foreman is often the only regular employment authority figure on a construction job site and acts as the normal conduit between other employees and the employer.

40. The Board’s concern with working foremen is not with their status as such, but, in light of their position vis-a-vis other employees, whether they have acted in a manner which has affected the voluntariness of any petition. Because of the nature of the employment relationship, in which employees are in a position of economic dependence on their employer, there is a difference, for purposes of assessing the support for and opposition to an application for certification, between a working foreman who participates in a union organizing campaign and a working foreman who participates in the origination and circulation of a petition. This is because the former are generally viewed as acting contrary to an employer’s interest, while the latter are generally perceived to be acting in the interests of or even as an extension of the employer.

41. DiTomaso is a working foreman. It is common ground that he is an employee in the bargaining unit. Consequently, his status as such is not in issue before us. DiTomaso did, however,

have overall responsibility for the Platinum job site and was the normal conduit for information between P & M and its employees on that site. In addition, DiTomaso is not a novice when it comes to petitions.

42. In our view, DiTomaso's approaches to Cook, Longworth, Mac Aleese, and Dunn were a calculated and concerted effort by him to induce those four employees, who he had identified as being marginal supporters of the applicant and who he thought would be susceptible to suggestions that they should alter their position, to send in a petition. The evidence suggests that something prompted DiTomaso to take action on April 3, 1989. The telephone call that Pollock made to Mancini, in which he specifically mentioned DiTomaso, and DiTomaso's flurry of activity the following day lead us to conclude that it more probable than not that Pollock made a similar telephone call to DiTomaso and that this was the "something" which was DiTomaso's incentive to approach Cook, Longworth, Mac Aleese, and Dunn on April 3, 1989. Such a telephone call was more probably than not what led DiTomaso to say that he would put his own job on the line for those employees who did sign a petition. DiTomaso do not strike us as being either imprudent or given to making rash promises. It is likely that he felt comfortable giving such an undertaking because of assurances he had received from Pollock.

43. In addition, the removal of Mancini from the Platinum job site was designed to make it easier for DiTomaso to obtain petitions. Mancini, who was, as we have already noted, the working foreman for at least three, if not all four, of the employees who DiTomaso approached on April 3, 1989, had been identified as a supporter of the applicant as a result of his conduct in the course of the applicant's organizing campaign (for example, an organizing meeting was held at his home, he participated in discussions about the merits of trade unionism on the job site, and he was present in at least one when at least Cook signed one of his cards). His removal from the Platinum site cleared the way for DiTomaso's approaches to Cook, Longworth, Mac Aleese, and Dunn. In this regard, we observe that Mancini's involvement with the applicant seemed more important to Pollock than the elevator problem at the Consulate when he telephoned Mancini on April 2, 1989. In addition, while there is no disputing that there was an elevator problem at the Consulate which had to be remedied, it is less than obvious why two journeymen (Mancini and Fearon) had to be sent there a full morning before any work directly related to the elevator problem could be done and given the type of work which then had to be done.

44. The evidence reveals that the employees perceived the respondent as being opposed to unionization. In our view, when DiTomaso, effectively the "boss" on the Platinum job site, approached Cook, Longworth, Mac Aleese, and Dunn on April 3, 1989, he was perceived to be delivering a message to them from P & M., their employer. That this message, which in essence was that "we know you support the union and if you don't send in a petition you will be in trouble" was received by those four employees is evidenced by their sudden interest in petitions. In the result, we have a working foremen, prompted by the employer, approaching employees during regular working hours to send in a petition and making threats relating to their job security. In these circumstances, we are not satisfied that any of the DiTomaso, Cook, or Longworth/Mac Aleese's petitions were voluntary and we give them no weight.

45. And what of the Honybun/Lovnicki petition? The evidence establishes that Honybun, the only person who testified with respect to the origination and circulation of that petition, did not actually see anyone else sign it. The evidence reveals that there was a previous petition, which Honybun testified was identical to the one before the Board, the signatures on which Honybun did witness, but that petition is not before the Board. It appears that Lovnicki, for reasons which are not in the evidence before the Board, determined that that first petition was improper and took it upon himself to circulate the second one. The evidence also suggests that Lovnicki had a relation-

ship with P & M which set him apart from other employees. In the result, the Board has no direct evidence of the origination or circulation of the Honybun/Lovnicki petition other than for the signature of Honybun himself. For that reason, we are unable to give any of the signatures on it other than Honybun's any weight (see *Custom Foam Specialities Limited*, [1986] OLRB Rep. Dec. 1680; *Skelhorns Bus Line Limited*, [1986] OLRB Rep. Oct. 1435). Further, what evidence there is before the Board with respect to Lovnicki's position with P & M and his activities on April 3, 1989, leaves us unable to conclude even that Honybun's signature was voluntary.

46. There has therefore been insufficient doubt raised concerning the support enjoyed by the applicant to cause the Board to exercise its discretion under section 7(2) of the *Labour Relations Act* to direct that a representation vote be held. Having regard to the Board's findings in its June 7, 1989 decision and herein, the applicant is entitled to be certified. The only remaining issue is whether P & M and Northland Electric (Ont.) Limited should be treated as constituting one employer for purposes of the Act. On the material before the Board, however, the disposition of this issue cannot, affect the applicant's right to certification with respect to P & M. Consequently, pursuant to section 6(2) of the Act and pending the final disposition of the application for relief under sections 1(4) and 63, the Board finds it appropriate to certify the applicant with respect to all journeymen and apprentice electricians in the employ of P & M Electric (1982) Ltd. in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman. A formal certificate must await the disposition of the section 1(4) and section 63 matters. There is of course no need to deal with the applicant's request for relief under section 8.

47. The Registrar is directed to schedule these matters for hearing for the purpose of hearing the evidence and representations of the parties with respect to the applicant's request for relief under sections 1(4) and 63 of the Act and any other matters arising out of or incidental to them.

---

**3109-88-R; 3120-88-R** International Brotherhood of Electrical Workers, Local 353, Applicant v. P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited, Respondents v. Group of Employees, Objectors; I.B.E.W. Construction Council of Ontario, International Brotherhood of Electrical Workers, Local 105, International Brotherhood of Electrical Workers, Local 353, Applicants v. **P & M Electric Limited**, Pomico Holdings Inc., P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited, Respondents

**Certification - Construction Industry - Practice and Procedure - Legislation not contemplating "interim certificate" requested by union - Board practice confined to issuing decision on appropriateness of certification on interim basis - Request denied**

**BEFORE:** G. T. Surdykowski, Vice-Chair, and Board Members W. N. Fraser and H. Kobryn.

**DECISION OF THE BOARD;** October 30, 1989



1. By letter dated October 24, 1989, the applicant in the certification application herein ("Local 353") asks that an interim certificate issue in this matter as follows:

We are in receipt of the decision of the Board dated October 17, 1989.

This decision makes a final determination with respect to entitlement to a certificate in the appropriate bargaining unit with respect to OLRB Geographic Area 8. The only outstanding issue concerns the Section 1(4) and/or 63 application relating to Northland Electric (Ont.) Limited. Accordingly we respectfully submit that a Section 6(2) interim certificate ought to issue with respect to the employees of P&M Electric (1982) Ltd. ("P&M") pending the final resolution of the remaining issues. We wish to emphasize that the Board heard extensive evidence with respect to the highrise residential projects being undertaken by P&M. By virtue of the Accreditation Order in respect of the residential sector of the construction industry within OLRB Geographic Area, 8 a collective agreement binds P&M in respect of such residential construction upon the issuance of an interim certificate.

We respectfully request that the Board see to this matter directly.

2. In paragraph 46 of its October 17, 1989 decision herein, the Board stated:

46. There has therefore been insufficient doubt raised concerning the support enjoyed by the applicant to cause the Board to exercise its discretion under section 7(2) of the *Labour Relations Act* to direct that a representation vote be held. Having regard to the Board's findings in its June 7, 1989 decision and herein, the applicant is entitled to be certified. The only remaining issue is whether P & M and Northland Electric (Ont.) Limited should be treated as constituting one employer for purposes of the Act. On the material before the Board, however, the disposition of this issue cannot, affect the applicant's right to certification with respect to P & M. Consequently, *pursuant to section 6(2) of the Act and pending the final disposition of the application for relief under sections 1(4) and 63, the Board finds it appropriate to certify the applicant with respect to all journeymen and apprentice electricians in the employ of P & M Electric (1982) Ltd. in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman. A formal certificate must await the disposition of the section 1(4) and section 63 matters. There is of course no need to deal with the applicant's request for relief under section 8.*

[emphasis added]

Consequently, it should be evident that the Board *has* certified the applicant as the bargaining agent for certain employees of the respondent P & M Electric (1982) Ltd. (that is, those employees in the bargaining unit as set out in paragraph 46) on an interim basis pursuant to section 6(2) of the *Labour Relations Act*. Final certification must await the disposition of what appear to be the sole remaining issues in these proceedings (namely the requests for relief under sections 1(4) and 63 of the Act) which will determine who is the respondent in the certification matter. Until the name of the employer referenced in it can be ascertained, the composition of the bargaining unit cannot be finally resolved.

3. The *Labour Relations Act* contemplates that a document called a Certificate will issue to a trade union which applies for certification and is found by the Board to be entitled to be certified (see, for example, sections 5(2), 57(1), 61(1) and (3), and 144(2)). There is nothing in the Act which contemplates any interim certificate document. In practice, the Board does not issue interim certificates as such. The only "document" issued in that respect will be the written decision, if any, in which the Board records its determination that it is appropriate to certify an applicant trade union on an interim basis pursuant to section 6(2) of the Act (for discussion of the Board's practice

in this respect and the effect of interim certification in general see *Comstock Funeral Home Ltd.*, [1982] OLRB Rep. Oct. 1436).

4. In the result, it is neither necessary nor appropriate to issue an interim certificate document and Local 353's request in that respect is denied.

---

**0082-87-R United Food and Commercial Workers International Union, Locals 175 & 633, Applicant v. Steinberg Inc., Miracle Food Mart Division and Oshawa Holdings Limited, c.o.b. as Dutch Boy Foods, Respondents**

**Sale of a Business - Company acquiring lease, fixtures and leasehold improvements of former employer in retail food business - Union claiming successor rights - Board weighing factors including lengthy hiatus in operations, acquisition of lease and chattels through independent transactions, supply of employees from company's other stores - Application dismissed**

**BEFORE:** *N. B. Satterfield*, Vice-Chair, and Board Members *J. Campbell* and *J. Sarra*.

**APPEARANCES:** *Harold F. Caley* and *Dennis Sexton* for the applicant; *D. Brent Labord* and *John Peardon* for Miracle Food Mart, a Division of Steinberg Inc.; *E. T. McDermott*, *A. Burke* and *G. Joffe* for Dutch Boy Food Markets, a Division of Oshawa Holdings Limited.

**DECISION OF THE BOARD;** October 2, 1989

1. The names of the respondents are amended to read: "Steinberg Inc., Miracle Food Mart Division and Oshawa Holdings Limited, c.o.b. as Dutch Boy Foods". For ease of reference, the Board will refer to them, respectively, as "Steinberg" and "Dutch Boy", and to the applicant as "the union".

2. The matters raised by these proceedings came on for hearing before a different panel of the Board. During the early course of the hearings, the parties consented that the panel as constituted herein hear and decide all matters raised by the proceedings.

3. This application has been made under section 63 of the *Labour Relations Act*. The section reads in part as follows:

63. (1) In this section,

- (a) "business" includes a part or parts thereof;
- (b) "sells" includes leases, transfers and any other manner of disposition and "sold" and "sale" have corresponding meanings.

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if he had been a party thereto and, where an employer sells his business while an application for certification or termination of bargaining rights to which he is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if he were named as the employer in the application.

...

(13) Where, on an application under this section, a trade union alleges that the sale of a business has occurred, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation.

4. Both respondents discharged fully their obligations under subsection 13.

5. The application arises out of the operation of a Dutch Boy store at 720 Westmount Road East in Kitchener, Ontario, in which premises Steinberg had previously operated a retail food supermarket in the name of Miracle Food Mart. The premises are part of the Laurentian Heights Shopping Centre which, at the time when Steinberg operated the premises, was owned by Community Expansion Inc. (hereafter "Community"). Steinberg was the first occupant of the premises and the "anchor" tenant of the shopping centre; that is, the tenant which was expected to draw shoppers to the centre to the benefit of the other tenants. It operated a food supermarket there from April 1980 until June 21, 1986, when the store was closed to the public. Steinberg's employees at the store, excluding assistant store managers and persons above that rank, were covered at all material times by a collective agreement between Steinberg and the union. The agreement in effect when Steinberg closed the store on June 21, 1986, expired on that date. The agreement covered all of Steinberg Inc.'s food supermarkets in Ontario. It was succeeded by another signed on March 10, 1987, to have effect from June 22, 1986 to June 21, 1988. The Steinberg employees were transferred to other Steinberg stores in Ontario, or terminated their employment with Steinberg in accordance with the terms of the collective agreement.

6. Dutch Boy acquired a lease to the premises and the fixtures and leasehold improvements which had been owned and used by Steinberg in the operation of its supermarket. The union alleges that Dutch Boy's acquisition of a lease and those fixtures and leasehold improvements constitutes a sale within the meaning of section 63 of the Act of Steinberg's business, or a part thereof, to Dutch Boy. Accordingly, the union seeks a declaration to that effect which would make Dutch Boy the successor employer to Steinberg at that location and bind it to the collective agreement between Steinberg and the union, insofar as it applies to the location, as though Dutch Boy were a party to the agreement.

7. Steinberg and Community were involved in litigation over their lease agreement prior to the closing of the store. The litigation began in September 1983. Steinberg had alleged that Community had failed to execute the lease because it was unable to perform certain conditions of the lease and in March 1983 served notice on Community of its intent to vacate the premises on or after September 30, 1983. Community was successful in obtaining an injunction prohibiting Steinberg from vacating. While the litigation continued, the Bank of Montreal put Community into bankruptcy. Laurentian Heights was put up for sale and the property came under the control of Wolf von Teichman, either personally or in the name of his company Trillium Restaurants Ltd. (hereafter "Trillium"), by means of an agreement of sale and purchase with the Bank of Montreal.

8. Fred D'Silva, president of Oswenda Development Limited, learned around March 1985 that the shopping centre property was for sale. Oswenda is a general contractor and developer of shopping centres and apartment properties. D'Silva took an option on Laurentian Heights but let it lapse in June 1985 for lack of financing. Early in 1986 D'Silva made an offer to Oswenda to buy the shopping centre on condition that Oswenda would get clear title to the property, which required disposition of the litigation between Steinberg and Community, and vacant possession of the Steinberg store premises. D'Silva proposed also that von Teichman buy from Steinberg and sell to Oswenda all of the store fixtures and leasehold improvements. In fact, the offer of sale and purchase for the shopping centre and the proposal respecting the purchase and sale of the fixtures and



leasehold improvements was made by Arfan Associates Limited, a wholly-owned subsidiary of Oswenda. On closing it was intended that Arfan would transfer title to Oswenda.

9. D'Silva set the offering price for the shopping centre to allow for a possible loss on Oswenda's purchase and resale of the fixtures and leasehold improvements. He also arranged Oswenda's financing of the shopping centre purchase to accommodate the detrimental impact on rental income of the store remaining vacant for up to 12 months. D'Silva was attracted to the property for several reasons. Oswenda was working on two condominium developments in the Kitchener-Waterloo area, an area which it considered to be very stable; there were three acres of undeveloped land in the shopping centre parcel and, if the vacant store could be leased for \$9.00 per square foot, it would pay for the cost of developing that land; and, the cost of acquiring the property compared with its replacement cost was very favourable to Oswenda.

10. Von Teichman was able to fulfil all of D'Silva's conditions and the deal between them closed at the end of May 1986. Releases were exchanged protecting Steinberg, Community and Oswenda from any future legal action arising out of the lease dispute between Steinberg and Community and Steinberg and Community agreed to an early termination of their mutual obligations under the lease to be effective June 30, 1986. Steinberg agreed to give vacant possession to the store not later than that date. It actually vacated the store by June 21, 1986, effectively withdrawing from operating retail food supermarkets in Kitchener-Waterloo. Its nearest supermarket stores are located in Guelph and in the Galt area of Cambridge.

11. D'Silva considered his options for the vacant store were to find as a tenant a junior department store like Towers or K-Mart, a retail food store operated by one of the major chains, a major specialty store like Canadian Tire, Beaver Lumber or The Linen Service, or to sub-divide the 36,000 square feet. While D'Silva considered a department store to be the best anchor tenant because it would be expected to draw people from a greater area than a food store would, he also believed that the space available likely would be inadequate for most junior department stores and speciality stores, so his first preference was for a food-type store.

12. Paul Conway, general manager of Oswenda, approached representatives of the potential tenants referred to above. His efforts, according to D'Silva, drew a poor response. The only expression of interest was on behalf of Dutch Boy through Gordon Devonshire who was the Director of Real Estate for the Oshawa Group of companies at the time. D'Silva had taken into account the possibility that there might be no revenue from the store for up to 12 months when he arranged financing for the purchase. Thus, when it appeared to him that Dutch Boy might be the only party interested in the premises, he directed Conway to focus his attention on acquiring Dutch Boy as the centre's anchor tenant.

13. Approximately a year prior to hearing that the store in the Laurentian Heights shopping centre was available, Devonshire had been investigating for Dutch Boy and other divisions of the Oshawa Group a planned shopping centre site at Ottawa and Alpine Streets in Kitchener. The developer had applied for rezoning of the site and, one year later, when the Laurentian Heights store came to Devonshire's attention, the developer was still awaiting the rezoning and Devonshire was still interested in the property as a site for a Dutch Boy retail food store. When, however, it began to look like he could negotiate more advantageous conditions for the Laurentian Heights store, Devonshire finally rejected the Ottawa/Alpine site. Dutch Boy was operating six Dutch Boy Food Markets in Kitchener-Waterloo and wanted a store in the market area where the Ottawa/Alpine and Laurentian Heights sites are located. The two sites are approximately one mile apart. Dutch Boy wanted to locate a store in the area because it was isolated from the nearest Dutch Boy stores by Highway #8.

14. Dutch Boy opened for business on March 11, 1987, after making substantial renovations to the store. The store manager, assistant store managers, department heads and other full-time staff for the store came from other Dutch Boy locations. They were replaced by new employees hired for that purpose and trained at the other locations. Part-time staff were hired and trained at the store. The business terms for Dutch Boy's occupancy of the store had been settled by March 11th, but no lease had been executed. One eventually was executed between Oshawa Holdings Limited (on behalf of Dutch Boy) and Oswenda.

15. The history of the application of section 63 is replete with examples involving myriad transactions in the retail food industry. Counsel for the union and Dutch Boy relied on and reviewed many of the Board's reported decisions dealing with that industry. The Board has considered their analyses of its jurisprudence but will neither attempt to summarize those aspects of their submissions or undertake itself an extensive review of the law. Excellent reviews are to be found in a number of the cases relied on by both counsel, notably: *More Groceteria Limited*, [1980] OLRB Rep. April 486; *Queensway Foods Ltd.*, [1984] OLRB Rep. Feb. 358 and *Valencia Foods*, [1984] OLRB Rep. May 773. The application in *More* resulted in a declaration of a sale of a business, the applications in *Queensway* and *Valencia* did not. The *Valencia* decision, the most recent of the three, reviews in some depth the development of the Board's jurisprudence under section 63, particularly as it has been applied in the retail food industry. This panel of the Board finds it useful to set out some of its discussion respecting the purpose, effect and scope of the section and its application to retail food businesses.

16. On the purpose, effect and scope of the section, the Board in *Valencia*, *supra*, said:

24. Section 63 takes effect only if there is a "sale" of a "business". A sale of business will always involve the transfer of assets of some kind from one legal entity to another, whether the assets transferred are shares used in the business; however, a transfer of assets will not always constitute a sale of business. When section 63 is invoked, the Board must determine whether there has been a "sale", a concept broadly defined in the statute and liberally interpreted by the Board: *Thorco Manufacturing Ltd.*, 65 CLLC ¶16,052. In determining whether there has been a sale, the Board is more concerned with the substance of transactions than with their form. Two or more transactions or events may, together, constitute a sale. As the Board noted in *Metropolitan Parking Inc.*, *supra*, at ¶28:

The Board has found a transfer of a business through a "chain" transaction, or sequence of sales (*Culverhouse Foods Ltd.*, [1976] OLRB Rep. Nov. 691; *Trenton Riverside Dairies*, [1964] OLRB Rep. May 72), a corporate reorganization and merger, (*Eaton Yale Ltd.*, [1971] OLRB Rep. Oct. 667; *Westel Rosco Ltd.*, [1966] OLRB Rep. Dec. 718) and through the offices of a receiver where "the business" has been transferred as a going concern (*Marvel Jewelry Ltd.*, [1975] OLRB Rep. Sept. 733; *Field-Price Ltd.*, [1973] OLRB Rep. Oct. 543; *Parnel Foods Ltd.*, [1971] OLRB Rep. Nov. 715.) The manner of disposition is irrelevant so long as a transfer has, in fact, taken place. The interposition of a third party, acting as an agent or conduit, does not affect the result.

25. The identification of a "sale" is usually less difficult than the determination whether the subject matter of the sale constitutes a "business" or "part of a business". In a "text-book" business acquisition by asset purchase, the purchaser seeks from the vendor the tangible and intangible assets employed in the business, assurances of continued commercial relations with suppliers and customers, and covenants of the vendor with respect to various matters, including non-competition. Where all the textbook elements are present, it is not difficult to conclude that a sale of a business has occurred. Some elements may be absent because, in the particular circumstances, those elements are not necessary, or because the parties or their advisors have not read the "textbook", or because the parties intend to convey a business but do not wish it to appear so. Elements may also be absent because the parties have no desire or intention to convey a business. Not infrequently, the parties to a transaction are focusing simply on the effective conveyance of certain assets, and do not ask themselves whether the assets sold together constitute a

business. That question is, however, one which the Board is regularly obliged to address. As the Board said in *Culverhouse Foods*, [1976] OLRB Rep. Nov. 691 at ¶16:

...In each case the decisive question is whether or not there is a continuation of the business...the cases offer a countless variety of factors which might assist the Board in its analysis: among other possibilities the presence or absence of the sale or actual transfer of goodwill, a logo or trademark, customer lists, accounts receivable, existing contracts, inventory, covenants not to compete, covenants to maintain a good name until closing or any other obligations to assist the successor in being able to effectively carry on the business may fruitfully be considered by the Board in deciding whether there is a continuation of the business. Additionally, the Board has found it helpful to look at whether or not a number of the same employees have continued to work for the successor and whether or not they are performing the same skills. The existence or non-existence of a hiatus in production as well as the service or lack of service of the customers of the predecessor have also been given weight. No list of significant considerations, however, could ever be complete; the number of variables with potential relevance is endless. It is of utmost importance to emphasize, however, that none of these possible considerations enjoys an independent life of its own; none will necessarily decide the matter. Each carries significance only to the extent that it aids the Board in deciding whether the nature of the business after the transfer is the same it is was [sic] before, i.e. whether there has been a continuation of the business.

In *Grand Valley Ready Mixed Concrete Supply Limited*, [1981] OLRB Rep. June 663, the Board described the appropriate analysis in this way:

...In most section 55 [now 63] applications, whether involving the alleged sale of the whole business or a part thereof, the nature of the alleged predecessor's business organization provides the ultimate answer. The Board identifies its essential elements and determines if sufficient of these have been transferred to the successor as to allow the business and the employment which it generates to continue. See *Thunder Bay Ambulance Service*, [1978] OLRB Rep. May 467 and *Culverhouse Foods Limited*, [1976] OLRB Rep. Nov. 691. However, if as in *Canada Cement Lefarge*, [1977] OLRB Rep. Jan. 5, and *Darrigo Consolidated Holdings*, [1980] OLRB Rep. Jan. 29, assets have been disposed of which are peripheral or unrelated to the business organization to which the bargaining rights at issue attach, the Board will not find that there has been a sale of a business within the meaning of the section.

20. The exercise becomes more complicated where, as in this case, the alleged successor has carried on a parallel business. Where the alleged successor has carried on a parallel business the result of the transaction may as easily be an expansion or alteration of his business as the transfer of the alleged predecessor's business. An employment opportunity which flows from an expansion or alteration of the business carried on by the alleged successor prior to the section 55 transaction does not trigger the operation of the section. The union's bargaining rights attach to the predecessor's business and their preservation is contingent upon a transfer and continuation of that business.

26. In *Metropolitan Parking Inc.*, *supra*, the Board observed that continuity of the work performed is not by itself a conclusive test for applicability of section 63:

For a transaction to be considered a "sale of a business" there must be more than the performance of a like function by another business entity. There must be a transfer from the predecessor of the essential elements of the business as a block or as a "going concern." A business is not synonymous with its customers or the work it performs or its employees. Rather, it is the economic organization which is used to attract customers or perform the work. The Legislature could have provided for the continuation of bargaining rights whenever there is a continuity of the work performed, but it did not do so. Bargaining rights are continued only when the employer transfers *his* business. The use of the active verb and possessive pronoun is not insignificant.



Section 53 of the *British Columbia Labour Code* and section 144 of the *Canada Labour Code* are similar to section 63 of the *Labour Relations Act*. Both the B.C. and Canada Labour Relations Boards have recognized that the language and purpose of these provisions require more to support a declaration than similar work, as appears from the following passage from the B.C. Board's decision in *Canadian Odeon Theatres Limited*, 82 CLLC ¶16,139, [1981] 3 Can. LRBR 372, at pages 374 and 375:

As the Board pointed out in *Lyric Theatre*, [[1980] 2 Can. LRBR 331], the similarity of work performed before and after the transfer is not sufficient of itself. The Canada Board put it best in *Radio CJYQ Limited and Newfoundland Broadcasting Ltd. and National Association of Broadcasting Employees and Technicians*, [1978] 1 Canadian LRBR 565 at 574:

But continuity of the work done is not sufficient alone to satisfy section 144. There must be some nexus between the two employers other than the fact that one employed persons to do certain work that the other now does or will do, before one can be declared the successor of the other. Otherwise a loss of work to a competitor employer would result in a successorship. There must be some continuity in the employing enterprise for which a union holds bargaining rights as well as continuity in the nature of the work. The two go hand in hand.

17. The Board then went on to review how the section had been applied to retail food businesses (paragraphs 27 and 28):

27. *Dutch Boy Food Markets*, 65 CLLC ¶16,051 is one of the first cases in which the Board had an opportunity to assess an alleged sale of business in the retail food industry. In that case, Kitchener Foods offered to buy all of the leasehold improvements and fixtures on the premises from which Steinberg's then conducted its sole retail operation in Kitchener. The offer was conditional on the assignment to Kitchener Foods of Steinberg's leasehold interest in those premises. Steinberg's accepted the offer. The parties entered into a written agreement which contained no restrictive covenant by Steinberg's and expressly excluded "goodwill" from the purchase price. The Board rejected the argument that these features of the agreement precluded a finding that there had been a sale of a business:

• • •

A retail food supermarket, unlike some other businesses, has no customer orders or lists which can be transferred to a purchaser who intends to carry on the same type of business. By the very nature of a retail food business, with the exception of the name, a vendor has no goodwill which he can effectively give or withhold from a purchaser. The success of a food supermarket is dependent, on large measure, upon the support of the people who live in the area in which the store is located. Accordingly, any goodwill consists in the habit of customers of the vendor continuing to patronize the food market located on the same premises. If there was any goodwill to be acquired by Kitchener Food it was inherent in the premises themselves in which Steinberg's had carried on the same type of business as that carried on by Kitchener Food. Accordingly, the exemption of goodwill from the purchase price, in our opinion, has no real meaning.

Similar arguments were similarly rejected in *L & M Food Markets (Ontario) Limited*, [1965] OLRB Rep. Sept. 440 and *Leader's Clover Farms Food Market*, [1966] OLRB Rep. Nov. 636, both cases in which the successor acquired in a single transaction the predecessor's premises, fixtures, and equipment along with considerable stock-in-trade: all but the brand-name inventory in the *L & M* case, and all but the meat, frozen food, damaged stock and brand-name inventory in *Leader's*. The successor supermarkets opened 3 and 16 days, respectively, after their predecessors' supermarkets closed. The Board in *Dutch Boy* found a hiatus of 7 weeks' duration did not make the transaction there any less the sale of a business. It is perhaps noteworthy that, on the facts before it, the Board in that case was able to make a positive finding that the parties before them *intended* to engage in a sale of business:

Viewing the transaction more positively, *we find it most significant* that the wording of the Offer to Purchase itself clearly contemplates the sale of a “business”. More particularly, the second paragraph of Article 2 on page 3 reads:

This transaction of purchase and sale is to be completed on or before the 31st day of December, 1964 on which date vacant possession of the *business* and *premises* of the Vendor is to be given to the Purchaser. (The underlining is added for emphasis.)

In our opinion, the above wording makes it abundantly clear that *it was the intention of the parties that Kitchener Food acquire by sale the “business” of Steinberg’s.*

[emphasis added]

In assessing whether a sale of business has taken place, the absence of “textbook” elements becomes less critical if it is clear the parties thought they were engaged in a sale of business in a commercial sense.

28. Subsequent Board decisions all acknowledge, expressly or impliedly, the importance of the store premises as an element of a business in the retail food trade, and the significance of the inclusion of that asset in a putative “sale of business” transaction. The cases also reiterate the need to assess even that important factor in the context of all the surrounding circumstances, including the corporate relationship, if any, of vendor and purchaser, the continued presence or relocation of the vendor within the relevant market area, continued involvement of key personnel, the length of and reasons for the hiatus between the vendor’s closing and the purchaser’s opening, and any post-sale effort by the purchaser to identify its location by reference to the vendor prior operation: *Super City Discount Foods Limited*, [1970] OLRB Rep. Apr. 118; *Gordons Markets*, [1978] OLRB Rep. Dec. 1102; *Zehrs Markets Limited*, [1974] OLRB Rep. May 331; *Dominion Stores Limited*, [1979] OLRB Rep. 626; *Darrigo Consolidated Holdings Inc.*, [1980] OLRB Rep. Jan. 29; *More Groceteria Limited*, [1980] OLRB Rep. Apr. 486. The importance of each factor is likewise a function of surrounding circumstances. The importance of both location and hiatus depend on the nature of the market served. The habit addressed in *Dutch Boy* is the habit of patronizing a business which has become identified with a location, and not just the tendency, all other things being equal, to shop near home. A hiatus in operation will diminish the force of that habit at a rate and to an extent which depend, presumably, on the nature of the shopping alternatives available, the regularity of resort to those alternatives, and the extent to which vendor or purchaser behaviour encourages or discourages any impression that the discontinuance of supermarket operations is temporary. It is not realistic to suppose that the relationship and application of these factors can be reduced to an algebraic formula. This is in part because when one goes beyond obvious generalities, the description and prediction of shopping behaviour cease to be the proper subject of judicial or administrative notice and become a matter for empirical and expert evidence of a nature seldom, if ever, placed before the Board in these cases. More importantly, the attempt to reduce these matters to a formula, through expert evidence or otherwise, would be of limited use; answers to these questions about the retail market are not ends in themselves, but merely one of the means employed in assessing the still highly qualitative question whether a “business” has been sold. The lesson of the cases is that while location and premises are important elements of a retail food business, they are not themselves the business; even location and premises can be or become mere “surplus assets” which alone, or even in combination with other assets, can lack the dynamic or organic quality which distinguishes a business from an idle collection of assets: *Sunnybrook Food Market (Keele) Limited*, [1974] OLRB Rep. Jan. 47; and see *More Groceteria Limited*, *supra*, at 26 ¶21-24.

18. Steinberg surrendered to Community its right to occupy the store and operate a retail food supermarket from it and, in turn, was freed from its court-imposed obligation to continue to operate a supermarket there. With that, Steinberg withdrew not just from the market area served by the store, but from the whole Kitchener-Waterloo market. It disposed of the store’s fixtures, equipment and leasehold improvements to Trillium. Nothing in the evidence before us suggests that Steinberg’s surrender of its rights to use of the store was made conditional on the sale of those

assets to anyone, let alone to Dutch Boy. Trillium/von Teichman, in turn, sold those assets and the shopping centre to Oswenda/D'Silva. There is no evidence that Trillium/von Teichman was anything but a broker for the bank in finding a buyer for the property. Oswenda/D'Silva, the ultimate purchaser of the property, is a shopping centre developer. It does not operate retail food supermarkets and operating one in the former Steinberg store was not one of the options it considered. Oswenda acquired Steinberg's former fixtures, equipment and leasehold improvements as a "draw" for one of the classes of tenants it would be seeking for the store and was prepared to gamble on having to sell them independently if it did not find a tenant willing to buy them. There is no evidence that Steinberg at any time sought to find a buyer for its business and, on the evidence before the Board, it is beyond any reasonable inference that Trillium/von Teichman and Oswenda/D'Silva acted to find a buyer for Steinberg's business. Nor does the evidence disclose that Steinberg intended to sell part of its business to Dutch Boy. In addition, on the evidence, Dutch Boy and Steinberg are unrelated and, except for the lease governing Dutch Boy's occupancy of the store, they are unrelated to any of Oswenda, D'Silva, Trillium and von Teichman; and, Trillium and von Teichman are unrelated to Oswenda and D'Silva.

19. Once Dutch Boy took possession of the store, its existing business provided all of the management and full-time employees for its new store. Dutch Boy was able to do this because it was prepared to take advantage of the fact that it was negotiating a lease on another property at the same time and was prepared to invest in hiring and training replacement staff for existing managers and employees who would be transferred to either of the two new locations if lease negotiations were concluded successfully.

20. During the nine months when the store was closed, the only food supermarket comparable to Steinberg's store serving that market area was Zehrs, Dutch Boy's major competitor. It was approximately one mile away. The store had been "dark" for eight of the nine months. There was no visible indication that supermarket operations would or would not resume at the location. Those circumstances and their potential for dissipating the habitual patronage of the store, the supply of all managerial and full-time employees to the new operation from Dutch Boy's other stores and the independent nature of the transactions by which Steinberg surrendered its right to use the premises and sold its chattels and Dutch Boy acquired the chattels and the right to use the premises for a retail food store operation, weigh against a finding that there has been a section 63 sale of a business. In the Board's view, those factors, weighed in the context of all of the circumstances surrounding the transactions which began with Steinberg surrendering to Community its right to operate a retail food store in Community's shopping centre and selling its chattels to Trillium/von Teichman, and ending with Dutch Boy acquiring from Oswenda Steinberg's former chattels and a lease for use of the premises for a similar purpose, point towards a finding that Dutch Boy has expanded its business into the former Steinberg store.

21. For all of these reasons, none of the transactions, or any combination of them, by which Dutch Boy came to operate a retail food supermarket in the store in which Steinberg had operated a similar business, constitute a sale of a business from Steinberg to Dutch Boy within the meaning of section 63 of the *Labour Relations Act*. Accordingly, the application is dismissed.

---



**3532-87-R National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada), Applicant v. Venture Industries Canada, Ltd., Respondent v. Group of Employees, Objectors**

**Certification - Intimidation and Coercion - Unfair Labour Practice - Reference to two-tiered union dues made by ordinary employee soliciting union membership - Reasonable employee not likely to be influenced by statements of fellow employee lacking power over union dues and engaged in partisan salesmanship - Employees having opportunity to seek clarification - Inaccurate statements in literature distributed by employer and union mere partisan salesmanship - Board refusing to discount membership evidence and certifying union**

**BEFORE:** *Louisa M. Davie*, Vice-Chair, and Board Members *M. Rozenberg* and *M. Jones*.

**DECISION OF THE BOARD;** October 6, 1989

1. By previous decision of the Board, we issued a “bottom-line” decision in this matter, granted a certificate to the applicant, and indicated that our reasons for that decision would follow. We now provide our reasons.

2. Although the Board heard the evidence and representations of the parties in respect of a number of issues over numerous days of hearing, as indicated in our earlier decision, many of the issues and matters in dispute were resolved amongst the parties during the course of the hearing. Therefore, as stated in paragraph 5 of our earlier decision,

... the only matters which remained in dispute were those allegations which had been filed by both the respondent and the objecting employees. The substance of these allegations was that all, or at the very least a portion of the membership evidence obtained by the applicant and filed in support of this application was “tainted” by the improper conduct of Mr. Terry Varney. It was alleged that Mr. Varney had acted in a manner contrary to the *Labour Relations Act* to obtain membership evidence to support this application insofar as he had threatened, intimidated and coerced employees contrary to section 70 of the Act, and had improperly and in a misleading manner referred to the applicant’s “two-tier initiation” fee structure. Counsel submitted that Mr. Varney’s conduct cast sufficient doubt on the membership evidence filed to cause this Board to dismiss the application, or in the alternative order a representation vote to be conducted.

3. The union’s organizing campaign at Venture covered a period of approximately two months. From the totality of the evidence we conclude that during that period of time there were significant, and at times heated, conversations and communications between and amongst those involved or affected by the campaign. Those conversations and communications were not merely restricted to communications between employees who held opposing views. The evidence discloses that both the respondent employer and the applicant trade union each engaged in a campaign of communication with employees in which each party attempted to convey to the employees information and their respective opinions or viewpoints on the matter of certification. Both parties, either directly and indirectly sought to acquire the “loyalty” of the employees by encouraging employees to sign or not to sign union membership cards. From the evidence it would appear that the matter of unionization was frequently discussed and at times hotly debated. It is within this context that we turn to examine the evidence of the witnesses called by the respondent employer and the objecting employees in support of their allegations.

4. Sherry Bea (“Bea”) was one of the employees called by the respondent in support of its allegations. The substance of her testimony indicates that Bea, an opponent to the union’s organiz-

ing drive, and Terry Varney (“Varney”), an employee collector who was actively promoting the union, became involved in some very lively discussions. During these discussions or confrontations, voices were raised. Bea testified that she felt intimidated and harassed by Varney because of the tone of his voice, his derogatory comments to her, and his physical presence. In this regard Bea testified that Varney’s voice was high-pitched and excitable, that Varney called her stupid and accused her of not caring about her fellow employees, and during their exchange moved increasingly closer to her, eventually standing so close that his face was only four or five inches from Bea’s face. In respect of this latter evidence, Bea admitted in cross-examination that she was never physically threatened but *felt* intimidated because of Varney’s “forcefulness”. There is no evidence that she was physically threatened or intimidated. In his testimony Varney denied Bea’s allegations. Notwithstanding Varney’s “forcefulness”, Bea remained firm in her convictions in opposition to the trade union.

5. In our view, we need not resolve the conflict in the testimony of these two witnesses. From the totality of the evidence we find that there were undoubtedly some heated discussions in the workplace as those in favour of, and those in opposition to the trade union, voiced their respective opinions. Such heated discussions are not unusual. Even if we were to accept Bea’s evidence in its totality, we cannot find that the conduct or actions of Varney towards Bea involved any intimidation or coercion within the meaning of the Act. In this regard we adopt the words of the Board in *Dupont of Canada Limited*, [1961] OLRB Rep. Jan. 360 where the Board said at page 361:

We do not think that the Board was constituted to act as a censor of social pressures used either to persuade employees to join or not to join a union or to oppose or not to oppose a union unless the pressure is of such a nature that it places a person’s employment in jeopardy either directly or by implication.

(See also *The Kendall Company (Canada) Limited*, [1975] OLRB Rep. Aug. 611; *Alderbrook Industries Limited*, [1981] OLRB Rep. Oct. 1331.

6. Bea also testified that she had heard Varney tell two employees, Ms. Pam Griffore (“Griffore”) and Mr. Brad Pask that if those employees joined the union and signed cards they would have greater seniority than persons who did not sign cards. Bea did not know what Varney meant by that comment. Mr. Pask was not called to testify. Although Griffore testified about other matters, she could not remember any conversation with Varney dealing with the issue of how joining the union could affect an employee’s seniority. The only evidence in respect of this issue is therefore the somewhat vague and indirect evidence of Bea. This is to be contrasted with the direct evidence of Varney who denied the accuracy of Bea’s evidence and who testified that, in answering questions regarding seniority, he merely advised employees that any issues regarding seniority would be determined at the bargaining table. From the totality of this evidence we find that the respondent has not met the burden of proof in respect of its allegation that “Varney frequently suggested that employees who did not sign a union card would not have bargaining unit seniority.” The evidence before us is insufficient to establish that allegation.

7. The Board also heard the evidence of Susan Santsche (“Santsche”) another employee in the bargaining unit. Santsche was called by the respondent and initially testified only about the unfriendly attitude which Varney and Ms. Joey Gander (“Gander”) exhibited towards her after she indicated she needed more time and information before she would sign a union card. Gander was also an employee collector. Santsche did not at first testify in any manner which supported the allegation that either Varney or Gander had coerced or threatened her in a manner which contravened section 70 of the *Labour Relations Act* in order to get her to sign a union card. Thereafter, Santsche was confronted with her own hand-written statement, dated April 7, 1988 and a typewritten document entitled “Witness Statement” which she signed on May 4, 1988. It was asserted that

these statements were prior inconsistent statements. After further examination, and after hearing the submissions of the parties, the Board entered these statements as exhibits and permitted counsel for the respondent to cross-examine the witness about the circumstances under which the statements were made, the contents of the statements, and the alleged inconsistencies between the written statements and the witnesses' evidence in chief.

8. The hand written statement was written and signed by Santsche and is dated April 7, 1988. That statement also refers to the hostile or unfriendly attitude exhibited towards Santsche by Varney and Gander because of Santsche's refusal to sign a union card. Thus, the statement states:

Right then I told Terry that I was not interested. After that at work neither Terry nor Joey would speak to me. If Terry did speak, he had nothing nice to say. I then signed against the union.

... When I was leaving work one night Terry started on me that I was a bitch because I had never signed.

... After I signed a union card Terry spoke to me. Even Joey was much nicer to work with. The reason I signed was that I found that it was very hard to work and listen to Joey talk about the union. But after I signed I never heard a thing. The way I looked at it you weren't only signing a union card but you were signing for your friendship.

In our view, these alleged actions by Varney and Gander fall within the realm of "social pressure" used either to persuade employees to join or not join a union. Through these forms of social and peer pressure, employees attempt to show their disfavour with decisions made by other employees. Although we do not countenance such behaviour, it does not relate directly to the recipient's employment and does not either directly or by implication threaten their job security.

9. The same cannot be said however, for certain other statements made in this hand written document. These statements relate directly to Santsche's job security and threats made by both Varney and Gander about Santsche's continued job security in the event she did not sign a union card. Santsche wrote:

When I began working with Joey she then started telling me that "everyone" who signed against the union was going to lose their jobs [sic] because the union was going to be in soon. I then started to get worried.

... and she told me not to expect a job when the union got in. Finally, I signed a union card.

Santsche testified that she wrote this statement in the privacy of her own home after speaking with Mr. Brad Pask, a fellow employee. Mr. Pask was also one of the originators and circulators of the petition. Although Mr. Pask did not tell Santsche to write out the statement, he did advise her that this was one of the things she could do. Santsche said she wrote out the statement "because I didn't think that it was fair, what was happening to me. Terry not speaking to me."

10. In cross-examination, Santsche indicated that she wrote the statement about a week or two after she spoke to Brad Pask about these matters. We note that Santsche signed a membership card on March 28, 1988, more than a week before she wrote out her written statement. Santsche eventually gave this written statement to Brad Pask.

11. At some later point in time, Santsche met with a lawyer for the respondent in the offices at the plant. That lawyer went over her statement with her. Subsequently, the typewritten "Witness Statement" was provided by the lawyer for Santsche's approval and ultimate signature. Santsche signed that written statement on May 4, 1988. In that signed document, Santsche states *inter alia*:



One night Joey said “people who voted against the union will know it when it gets here. They will not have jobs because they will be laid off or fired.” I asked her why. She said “we are going to Court over it because the company’s writing false letters and having people not sign Membership Cards.

.... Joey said “the dollar I paid now would be a good start on the union dues when the union came in. She also said that the union had overwhelming numbers. I was afraid to ask them to leave because they intimidated me. I believed that since the union had such overwhelming numbers I should sign a Membership Card now so that it would not cost me more later.

.... I believed I would lose my job if I did not sign a union card because they could have me fired if I wasn’t a member. I believed it would cost me more to join the union later.

.... Another time while we were working on the line, Joey said “people that started petitions against the union would be in a lot of trouble.” This was in response to my asking Joey if anything would happen to people who signed against the union.

... During the course of the past five months I have been harassed and intimidated by Terry Varney and Joey Gander, organizers for the CAW. I have been led to believe the only way to keep my job was to do what Joey and Terry said because otherwise I would have to be fired at the request of the union.

12. That written statement also contain various references to the animosity exhibited by Varney and Gander towards Santsche until Santsche signed a union card. Santsche testified she signed the membership card when Gander and Varney attended at her apartment.

13. If the Board had been satisfied, on the balance of probabilities, that the various statements about which Santsche testified were in fact made to her by Varney and Gander, we would at a minimum have disallowed Santsche’s card and would have viewed the weight to be given to the membership evidence collected by Gander and Varney in a different manner. The Board does not countenance these types of statements *regardless* of whether they are made by a union official or a person of lesser rank in the union’s organizing drive who is attempting to obtain support for the union. Although in determining the effect of this type of improper behaviour the Board has distinguished between statements made by full-time union organizers and officials, and statements made by rank and file employee collectors, the cases leave little doubt that statements such as those alleged in Santsche written “Witness Statement” violate section 70 of the Act. Such statements clearly relate to job security, are coercive and threatening and seriously impair the reliance which the Board can place on membership evidence submitted in support of the application. If sufficient evidence of such statements was before the Board we would be concerned that the membership evidence was not sufficient *voluntary* evidence of membership by either Santsche or, depending on the circumstances, others who may have signed membership cards. (See for example, *L. M. Welter Limited*, [1965] OLRB Rep. April 34, *Crenmar Services Limited*, [1978] OLRB Rep. Jan. 48, *The Kendall Company (Canada) Limited*, *supra*, *Intermodal Marine Surveys Ltd.*, [1979] OLRB Rep. April 321, *PRC Chemical Corporation of Canada Ltd.*, [1980] OLRB Rep. Dec. 1805, *Aurora Steel Service Limited*, [1986] OLRB Rep. March 301.

14. On the basis of the evidence before us however, we find that the respondent has not met the burden of proof cast upon it. We are not satisfied, on a balance of probabilities that such statements were in fact made. Notwithstanding the written statements, in her *viva voce* evidence before us, Santsche was uncertain and equivocal. Notwithstanding counsel’s skilful cross-examination, Santsche did not expressly affirm the substantive portions of the written statements. Thus, for example, Santsche stated that it was “possible” Gander said everyone who signed against the union would lose their job. Santsche also testified that she could not recall whether Gander had made such a statement saying only “I can’t remember at this time that it was said but I told the truth in this letter [the April 7, 1988 statement] so *probably* then it was said” [emphasis added]. In

*viva voce* evidence, Santsche also was unable to recall or remember whether Gander in fact said “people who voted against the union will know it when it gets here, they will not have jobs because they will be laid off or fired.”, stating she could only remember conversations about the company writing letters and people having to go to Court. Santsche had no recollection of Gander saying anything to her about “people that started petitions against the union would be in a lot of trouble” as stated in the Witness Statement she signed on May 4, 1988. She could not specify why she “believe[d] I would lose my job if I did not sign the union card because they could have me fired if I wasn’t a union member. I believe it would cost me more to join the union later” (as alleged in the May 4, 1988’s statement Santsche signed). Although Santsche testified that she *believed* everything in the statement she wrote was true, she could not point to anything that was said which would make her feel that she would lose her job. Santsche went no further than stating it was “possible” she felt that way because of Gander’s alleged statement that “people who voted against the union will know it when it gets here. They will not have jobs because they will be laid off or fired.” We note again that in her evidence before us however, Santsche did not affirm that such a statement was in fact made.

15. From the totality of her evidence we find that at the time of her testimony Santsche had no independent recollection of the very serious allegations of improper conduct which are contained in her written statements. In respect of those statements which form the core of a violation of a section 70 of the Act, her evidence was ambiguous, hazy and indefinite. *At its best* it went no further than that Santsche wanted to write the truth in her written statements and, at the time she wrote and/or signed the statements she honestly believed that the statements were true. Santsche admitted however, that at the time she wrote and signed the statements she was angry. She also admitted that each of the statements contained certain statements which were not truthful. With the exception of the statement that alleges Gander stated that “people who started petitions against the union would be in a lot of trouble” (a statement which Santsche acknowledged was not true), the false statements contained in the written statements generally relate to minor details. Thus, for example Santsche admitted Varney did not “yell at her” and did not call her a “bitch” as alleged in the first written statement. There are also inconsistencies between the two statements. Thus, Santsche originally wrote that Varney called her mother, left a message and she called him back (admittedly false statements and an untrue “colourization” of the surrounding events). Her subsequent witness statement indicates that Varney called Santsche’s sister-in-law, and Santsche did not in fact return her call. Although these falsehoods relate to minor matters they do provide some guidance to the Board in assessing the weight to be given to the written statements and Santsche’s *viva voce* evidence. Finally, we note that the first written statement was written and signed more than a week after Santsche signed the union membership card. It refers to events which are alleged to have occurred in the weeks preceding that event. It is therefore not a statement which can be said to be written at a time which is relatively contemporaneous with the events described in the statement. At best, it is Santsche’s recollection of what she believed had transpired. It was written at the time she was angry and contains a number of false statements. In these circumstances and in view of Santsche’s vague and irresolute evidence in respect of the matters contained in that written statement, we find that we can give little weight to either that written statement or her *viva voce* evidence.

16. Similarly, we find that we can place little reliance on the witness statement which Santsche signed on May 4, 1988. It also contains statements which Santsche acknowledges were not entirely truthful. Santsche admitted that at least *part* of the reason she signed the second witness statement was because she felt she had to carry through with what she had said in the first handwritten document and because she was afraid she might lose her job. In view of these factors, and again in light of Santsche’s uncertain, vague and undecided testimony we find we can give little



weight to her evidence. The evidence tendered is insufficient to support the allegation that either Varney or Gander intimidated or coerced Santsche to get her to sign a union card.

17. Pam Griffore (“Griffore”) another employee in the bargaining unit also testified. We found Griffore to be a forthright witness who gave her testimony in an open and candid manner. Griffore had a clear and specific recollection of the various conversations she had with Varney. Where Griffore’s evidence contradicts or is inconsistent with the evidence of any other witness, we have preferred the evidence of Griffore.

18. Griffore testified about several conversations she had with Varney. Both Griffore and her husband are friends with Varney. Mr. Griffore was also one of the employees who circulated and supported the petition in opposition to the union. Notwithstanding their opposing views to the union’s application for certification, and the very vocal discussions which have occurred as a result of their differing opinions, Griffore and Varney continue to view each other as friends.

19. During the course of the organizing drive, Griffore was expecting a baby. She went on maternity leave the first week in March. Griffore testified that on several occasions Varney attempted to convince her to join the union. The occasions which prompted the allegation of a violation of section 70 of the Act by the respondent against the applicant occurred while Griffore was a line inspector at the L/Body line. On this occasion, Varney approached Griffore and asked her if she had changed her mind about signing a union card. Griffore had previously advised Varney she did not wish to join the union. Griffore again told Varney she did not want to sign a card. In the ensuing conversation, Varney told Griffore that “because I was pregnant they could possibly lay me off anytime after I had maternity leave and would not call me back”. Varney continued and told Griffore that if she signed the union card she would be guaranteed her job after she had the baby. Varney told Griffore that she was being selfish and was only thinking about herself and not the other employees. He advised Griffore that if she did not sign a card and the union did not get in he, Varney would not have a job. The substance of Griffore’s testimony in respect of this conversation was corroborated by Bea.

20. Varney on the other hand testified that he merely told Griffore that her *position* at the plant (meaning her position as line inspector and not her job) was not assured upon her return from maternity leave, and that the company could “shuffle her anywhere in the plant”. In so doing, he referred to the Employee Handbook at Venture which states that upon return from a leave the company, “will endeavour to place you in your former position or an equivalent position, depending on the availability of such position.” Varney’s recollection of the conversation was corroborated by Ms. Cheryl Pask (Pask). Pask testified that both she and Griffore were told by Varney that upon their return from their respective leaves, they were not guaranteed that they would be returned to their position, but rather could be placed elsewhere in the plant. Pask herself was scheduled to commence a sickness and accident leave of absence in early March. During her cross-examination, Griffore denied Varney made any reference to the Employee Handbook and specifically disagreed with the question put to her that Varney told her they did not have to hire her back to the *same job*. She reiterated that she was told by Varney that the company did not have to hire her back. She admitted however, that Varney *also* told her that if the respondent did hire her back the company would not have to give her back the same job. Griffore recalled that Pask also participated in a conversation with Varney and Griffore at which this issue was discussed. Griffore testified that she had somehow gained the impression that there was a difference in their respective positions because although she would be returning from maternity leave, Pask was returning from a medical leave.

21. Both Pask and Griffore testified that they met with Mr. Mike Pavlovic (“Pavlovic”) the



Plant Manager to discuss this matter. Griffore also testified however, that after her initial conversation with Varney, she spoke to Pavlovic alone.

22. Counsel for the respondents and the objecting employees argued that there was no inconsistency between the evidence of Griffore and Pask, as Pask related an incident and a conversation which occurred at a different time than the conversation between Griffore and Varney. Although the evidence was less than satisfactory in respect of this submission, after a review of the totality of the evidence and on a balance of probabilities we find that there were indeed two separate occasions when this matter was discussed with Griffore. On the occasion during which Griffore was told by Varney that she was not guaranteed her *job* upon the expiration of her maternity leave, Pask was not present. Pask was only present when Varney discussed the “position” which employees could be given upon their return from a leave. It is the first occasion and the first conversation between Varney and Griffore which forms the basis of the complaint against the applicant and which we propose to address.

23. After her conversation with Varney, Griffore was very upset. She testified she was scared she was going to lose her job. Griffore also testified that she believed that if she would sign a union card she would be protected from lay-off, and if she did not sign a card she might lose her job. That same night however, she went alone to discuss the matter with Pavlovic. Pavlovic reassured her and told her that it was against the law for a company not to reinstate a person upon the expiration of a maternity leave. On the subsequent occasion when Griffore and Pask *both* spoke to Pavlovic, Griffore asked Pavlovic if she would still be a line inspector when she returned from maternity leave. Pavlovic assured her that she would be returned to work as a line inspector. Griffore acknowledged that Varney had no authority or involvement in such managerial decisions as the hiring, firing, discipline or lay-off of employees. Despite Varney’s statements, Griffore was not persuaded to sign a union membership card.

24. Counsel for the respondent submitted that these facts constitute “intimidation or coercion” within the meaning of section 70 of the *Labour Relations Act*. Counsel pointed to the fact that Varney, the perpetrator of the coercive and threatening statements to Griffore was the key union organizer generally recognized by employees in the plant as being “in charge” of the union’s organizing campaign. Varney was in fact the collector of approximately thirty-three percent of the cards. The remainder of the cards were also collected by rank and file employees. Only the cards of some of the employee collectors were in turn collected by the union officials who were ultimately in charge of this organizing campaign. It was argued that because Varney was the “key” and “primary” union organizer, and was perceived to be the “leader” of the organizing campaign, his actions ought to be judged in a manner similar to the standards imposed upon paid union organizers or union officials. Counsel asserted that the actions, conduct and statements made by Varney were more than those of a mere rank and file employee expressing his own opinion. Counsel asserted that in the eyes of the employees Varney “walked in the shoes” of the union and thus his statements to employees were viewed more seriously by employees and would carry more weight with the employees. It was submitted that this Board should *also* view Varney’s statements and conduct more seriously, because of his prominent role in the campaign. It was argued that Varney’s comments threatened Griffore and directly linked her continued job security to union membership. Counsel submitted that such threat of loss of one’s job is intimidation which is contrary to section 70 and therefore this application ought to be dismissed. Alternatively, he urged the Board to discount all of the membership evidence collected by Varney and Gander (who had also threatened the job security of Santsche) or at the very least order a representation vote. Counsel for the objecting employees concurred with and adopted the submissions of counsel for the respondent. In support of these submissions counsel relied upon *Walter E. Selck of Canada Ltd.*, [1964] OLRB Rep. June 138, *VR/Wesson Limited*, [1968] OLRB Rep. Nov. 811, *The Kendall Company*

(Canada), *supra*, *Intermodal Marine Surveys Limited, supra*, *Chemtrusion Inc.* [1979] OLRB Rep. Dec. 1150, *General Motors of Canada Limited*, [1980] OLRB Rep. Oct. 1437, *P.R.C. Chemical Corporation of Canada Limited, supra*; *T and F Construction Equipment Rental Limited*, [1983] OLRB Rep. Dec. 2116 and *Aurora Steel Service Limited, supra*. In addition to these cases, in deciding this matter the Board has also considered *Thames Steel Construction Ltd.*, [1980] OLRB Rep. April 545, *Linhaven Home for the Aged*, [1962] OLRB Rep. May 66, *Reliance Electric Limited*, [1979] OLRB Rep. Nov. 1107, *Unlimited Textures Company Limited*, [1984] OLRB Rep. Jan. 138, *Alderbrook Industries Limited, supra*, *Dupont of Canada Limited, supra*, *Green Giant of Canada Limited*, [1973] OLRB Rep. June 376, *Crenmar Services Limited, supra*.

25. A review of these cases indicate that the tests and standard of conduct imposed upon various persons involved in organizing campaigns was accurately and succinctly summarized in *General Motors of Canada Limited, supra*, where the Board stated at page 1439:

14. The Board has in the past had numerous opportunities to review the standard to be applied in assessing the conduct of a rank and file employee, as opposed to a union official, in the collection of membership evidence, and the consequences that flow from irregularities established in the collection of membership evidence by an employee. In reviewing the standard applicable to an employee-collector the Board commented as follows in *The Kendall Company (Canada)* [1975] OLRB Rep. Aug. 611 at p. 619:

In all cases alleging improper trade union conduct the Board first begins by assessing the nature of the conduct - the test being would it deter the reasonable employee? If the answer to this question is in the affirmative the Board must go on to assess the possible significance of the conduct and in this regard the identities of those persons involved are very important. Where the action impugned is that of a responsible official of the trade union a single indiscretion may cause the Board to conclude that it cannot place reliance on any of the evidence of membership submitted by the union. Where the irregularity relates to evidence of membership procured by a person of lesser rank in the union organization, the actual cards involved may be disallowed and the weight to be given to the remaining evidence of membership will depend on the nature of the irregularity and the extent to which the objectionable practice was resorted to in the signing up of members. (See *Webster Air Equipment Company Ltd.* 58 CLLC ¶18,110; *Walter E. Selck of Canada Ltd.*, [1964] OLRB Rep. June 138; *Linhaven Home for the Aged*, [1962] OLRB Rep. May 66.)

15. Although the foregoing comments were made in the context of allegations of intimidation, we are satisfied that they are equally applicable where fraud or misrepresentation is alleged. In the *Kendall* case the Board exhaustively reviewed the standards to be applied to different types of conduct by employees soliciting union membership. As that decision discloses, the Board has a particular concern with threats to the job security of employees in attempts to gain their support for a union, even when those threats are by a rank and file employee. On the other hand the Board has always sought to maintain a realistic appreciation of the need for free and unfettered conversation between fellow employees. In this regard, absent physical threats or threats to job security, the Board is careful not to place undue weight on a statement made by one employee to another on a subject in which neither of them is an expert, particularly when the recipient of the statement has every opportunity to check the statement's accuracy. (*Green Giant of Canada Limited*, [1973] OLRB Rep. June 376.)

16. Threats to job security have, however, been strictly viewed as beyond the bounds of employee free speech. For example, in *Walter E. Selck of Canada Ltd.*, [1964] OLRB Rep. June 138 the union's campaign was under the exclusive direction of a rank and file employee who collected all but three of sixty-two membership cards. In the face of unchallenged evidence that the employee-collector told two employees that they would lose their jobs if they failed to join the union the Board dismissed the application, concluding that it could not, in the face of that established unfair labour practice, rely on any of the membership evidence filed. Where, however, a statement made by one employee to another in the course of a union campaign does not threaten an employee's job security or otherwise disclose an unfair labour practice different con-



siderations apply. The Board is reluctant to hold the rank and file employee to the standard of a trained lawyer, or to impose censorship on the casual conversation that inevitably flows between employees during a union campaign. To do otherwise, in the words of the Board at p. 623 of *Kendall*, "would be oblivious to human nature and result in artificial standards that would adversely affect the rights of all employees under the legislation."

17. That is not to say, however, that a union can escape the consequences of irregular conduct by effectively placing its entire campaign in the hands of a rank and file employee. Where a person who is not a union official is charged with collecting all of the membership evidence and is found responsible for a non-pay (*Slough Estates*, [1965] OLRB Rep. June 173) or a non-sign (*Dominion Stores Limited*, [1964] OLRB Rep. Dec. 447) the Board may conclude that it can rely on none of the membership evidence filed and dismiss the application. Alternatively, in the face of such conduct by a person other than a union official, the Board may conclude that the documentary evidence is "under a cloud that requires the confirmatory evidence of a representation vote." (*Crock & Block Restaurant and Tavern*, [1980] OLRB Rep. Apr. 424.) The same considerations apply when the conduct in question involves threats to employees' job security (see the *Selck* case, *supra*).

18. The Board's reluctance to restrict or limit talk that may flow between fellow employees during a union campaign should not, however, be taken as an indication that the Board will not scrutinize the statements of rank and file employees, particularly where it is clear that an employee charged with the collection of all the membership evidence has substantially misrepresented to employees to [sic] meaning of signing a union membership card. If the evidence establishes that an employee collector has repeatedly obtained membership evidence by telling employees that by signing a card and paying a dollar they are in effect endorsing an application for a vote on the question of union representation, or if the Board cannot be satisfied to what extent such a representation was made, the Board may be unable to place any reliance whatever on the membership evidence filed, or it may seek the confirmatory evidence of a representation vote. In each case, however, the Board must consider the evidence in the particular case before it to make that determination.

26. This decision appears to enunciate and bring together two separate tests for determining whether there is doubt about the voluntariness of some or all of the membership evidence submitted in support of an application for certification. Application of either test to a particular fact situation is usually sufficient. In a number of cases however, both tests have been applied. In the evidence before us we find that regardless of which test is applied to these facts, the respondent has not proven that the membership evidence submitted in support of this application is "tainted" and ought to be discounted or requires the confirmatory evidence of a representation vote.

27. The second of these tests is referred to in the latter portion of the quoted paragraphs and requires the Board to determine whether, on the evidence in any particular case, there is a "repeated" pattern (as opposed to a single, isolated incident) of threats or misrepresentations. This test or approach places less emphasis on whether the statements made by the rank and file employee were in fact intimidating or coercive, and concentrates more on the extent of the action of such rank and file employee to determine the impact of such statements on the membership evidence -- whether such a conduct places the documentary evidence "under a cloud". Where the Board concludes that there is such a cloud, it may seek the confirmatory evidence of a representation vote notwithstanding that it was a "mere" rank and file employee, and not a union representative, who made the statements or engaged in the coercive conduct. Thus, for example in *Alderbrook Industries Limited*, *supra*, the Board stated at 1333-1334 that:

13. Unfortunate as it may be, it is not uncommon for antagonism to be generated between employees who line up on opposite sides of a campaign for union representation. Statements by any person amounting to intimidation or coercion of an employee, whether they are made for or against a union, or clearly contrary to section 70 of the *Labour Relations Act* and are ground for a complaint under section 89 of the Act. They may also form the basis for criminal charges. It does not follow, however, that the indiscretions of employees, whether they favour a union or



sympathize with their employer, are to be held against the principal parties to an application for certification. The Board can no more hold against a union a verbal threat made to an employee's job security by an indiscrete employee who is neither a union officer nor a collector of union membership cards that it can hold against an employer similar threats made by a fervently anti-union employee acting on his own. Evidence of widespread threats which are made by neither the employer nor the union might, of course, cause the Board to resort to the further evidence of a representation vote.

Similarly, in *Linhaven Home for the Aged, Supra*, the Board stated at page 68:

A review of the Board's decisions on matters of this kind leads to the conclusion that the Board distinguishes between the actions of union officials and representatives and those of rank and file employees. While in the former case a single threat of economic reprisal may be sufficient to cast doubt on all the evidence of membership submitted by the applicant to the extent of warranting outright dismissal of the application, in the case of a rank and file member, the weight to be given the remaining evidence of membership will depend on all the circumstances of the case. Factors which the Board will take into account include the nature of the irregularity and the extent to which the objectionable practices were resorted to in the organizational campaign.

[emphasis added]

28. This test is not applicable to the fact situation before us. In our view, notwithstanding counsel's submissions to the contrary, we do not have cogent evidence that the rank and file employee collectors in this instance engaged in a repeated pattern of improper conduct. Rather the evidence discloses an isolated instance, during the collection of some eighty-eight (88) union cards (excluding lost cards) in a bargaining unit of one hundred and thirty seven (137) in which Varney, a rank and file employee with no apparent experience in union organizing made an improper, inappropriate and incorrect statement to a fellow employee whose support for the union he was soliciting. Had Griffore signed a union membership card we would have disallowed her membership card in the same manner and for the reasons similar to those enunciated by the Board in *General Motors of Canada Limited* (see also for example *The Kendall Company (Canada) Limited, supra*, *Webster Air Equipment Company Ltd.* 58 CLLC paragraph 18,110, *Walter E. Selck of Canada Ltd.*, *supra*, *Linhaven Home for the Aged, supra*, *Canadian Electric Box and Stampings Limited*, [1964] OLRB Rep. Sept. 284. Griffore did not sign a union card however, and in our view, in the circumstances of this case this isolated incident is insufficient to "taint" the other documentary evidence of membership.

29. The other tests applied by the Board to the type of situation with which we are faced, can be found in the quotation from *The Kendall Company (Canada) Limited* decision. That test requires the Board "to first assess the nature of the conduct -- the test being would it deter the reasonable employee?" As indicated, if the answer to this question is yes, the Board will then go on to assess the significance of the conduct and in this respect the Board has also drawn a distinction between the identities of the persons who engaged in the conduct -- were they uninvolved rank and file employees? Rank and file employees collectors? Or paid union officials? We note that after reviewing a number of cases in this area, the Board in *Kendall* referred to one of the underlying rationales for these distinctions when it observed:

A reading of these cases demonstrates the Board's sensitivity to the realities of organizational activity. Improper conduct on the part of union officials may be symptomatic of much broader unlawful actions. Moreover, threats by trade union officials have a ring of malice that is qualitatively different from the disfavour of a fellow employee caught up in the "heat" of campaign activity. A fellow employee's threat is likely to be recognized for what it is - "an isolated outburst by a hot-headed partisan". Further, such persons are seldom capable of carrying out their threats and for this reason men and women of ordinary convictions are not likely to be inhibited from exercising rights under the Act.

30. The difficulty with this case is that Varney is neither a non-involved rank and file employee, nor is he a union official. Similarly, unlike the cases upon which counsel for the respondent relied, he was also not the “sole” or “exclusive” employee organizer as was the case in *Walter E. Selck of Canada Ltd.*, *supra*, (where a single employee had exclusive direction of the union’s campaign and collected all but three of the sixty-two membership cards) or *PRC Chemical Corporation of Canada Ltd.*, *supra*, (where the employee who engaged in the threatening conduct acted as collector on *all* the cards). Varney was not an outside “volunteer” organizer who, although not a paid-union official would have been perceived by employees in the bargaining unit as the representative of the union as was the case in *Chemtrusion Inc.*, *supra*. Rather, Varney was a fellow employee who collected a portion of the membership cards. Given the membership evidence before us, and unlike the situation in the *Aurora Steel Services Limited*, *supra*, in this case it cannot be said that “a majority” of the cards were signed by Varney as collector. Moreover, the evidence discloses that for a significant period of time during the organizing campaign, from February 19, 1989 to March 29, 1989, Mr. Varney was unable to attend work because of salmonella poisoning. Although there is some evidence that during this time he did on occasion attend at the plant, he did not work during this entire period of time. His absence from the workplace during the crucial period of the organizing drive which immediately precedes the filing of the application (in this case March 23, 1988) combined with the fact that Varney was not in fact the collector of even a majority of the cards have caused us to conclude that in the circumstances of this case, his conduct should not be viewed in the same light and should not be judged against the same standards as those imposed upon union officials.

31. Applying the “Kendall” test, we find that Varney’s statements to Griffore, and particularly statements to the effect that if she signed the union card she would be guaranteed her job after she returned from maternity leave, constitute improper conduct. That however, is not the end of the matter. There are in our view a number of significant factors which militate against the finding that this improper conduct impacted upon or adversely affects the documentary evidence submitted by the applicant union in support of its application.

32. First we note that the conversation between Varney and Griffore was essentially a “private” conversation relating to a very narrow issue which was personal to Griffore and affected only her status. There were very few employees who were privy of this conversation, and given the peculiar facts even fewer who could be affected by the substance of the conversation. Second, Griffore and Varney were at the time, and continue to be friends as well as fellow employees. Griffore acknowledged that Varney had no management status within the company and no authority to hire or fire. Viewed objectively, it cannot be said that Varney was, or could be perceived to have been in a position of carrying out the threat which counsel submits is inherent throughout the conversation, namely if you do not sign a union card you may not have a job when you come back from maternity leave. Indeed, although that characterization of the effect and substance of the conversation is possible and plausible, we do not view Griffore’s evidence in the same terms. The statements made by Varney about which Griffore testified are somewhat vague. They are equally capable of being interpreted as no more than a variation of the usual trade union assertion that without trade union representation and collective bargaining, an employee has no job security. Notwithstanding the fact that we accept Griffore’s evidence that Varney referred to her job, and not merely her position at the plant as asserted by Varney, we find that given the vagueness and imprecision of the statements it is difficult to state unequivocally that the statements assert or explain what the *union* will do (or will ask the employer to do) upon the expiration of her maternity leave if Griffore does not sign a card, or were merely claims of what the respondent could or would do regardless of whether Griffore signed a card.

33. This brings us directly to the third critical factor which has caused us to conclude that



the statements do not affect the membership evidence submitted. Given Varney's position we find that a reasonable employee would have and should have checked the accuracy of the statements made by Varney. In this regard, we adopt those words of caution of the Board in *General Motors of Canada* that: "... the Board is careful not to place undue weight on a statement made by one employee to another on the subject in which neither of them is an expert, particularly where the recipient of the statement has every opportunity to check the statement's accuracy." A similar sentiment was expressed in re *Canadian Electric Box and Stampings Ltd.* [1964] OLRB Rep. Sept. 284.

34. Notwithstanding Varney's personal opinion or interpretations of the handbook, it was clear to this Board that Varney is not, and viewed objectively would not have been perceived by his fellow employees as an expert on either the company's personnel practices or the policies of the trade union. Griffore had every opportunity, and in fact availed herself of the opportunity to check out the accuracy of Varney's statements with those who were, in her view, truly knowledgeable about this matter -- the Plant Manager. Immediately upon being faced with Varney's statements, Griffore went to Pavlovic to see if Varney's opinions and assessments were true. She was reassured that they were not. She was satisfied with Pavlovic's explanation because Pavlovic was a person with more expertise in this area, and the person who had the authority to carry through with his assessment. For Griffore, his opinions and assessments were "qualitatively different" and obviously carried more weight than those of Varney, a mere fellow employee. For these reasons, we are of the view that Varney's improper conduct did not in fact inhibit Griffore, and would not inhibit any other reasonable employee of ordinary convictions from exercising rights under the Act (see also *Canadian Electric Box and Stampings Ltd.*, *supra*, *The Kendall Company (Canada) Ltd.*, *Green Giant of Canada Limited*, *supra*, *Crenmar Services Ltd.*, *supra*).

35. Next we turn to the allegation that Varney had improperly and in a misleading manner referred to the applicant's "two-tier" initiation fee structure. It was submitted that Varney's conduct in this particular regard cast sufficient doubt on the membership evidence filed to cause the Board to dismiss the application or in the alternative order that a representation vote be conducted.

36. The only witness called to support this allegation was Mr. Brad Falconer ("Falconer"). He was called by the objecting employees. At the time of his testimony, Falconer was no longer an employer at Venture having been discharged in October 1988. Falconer testified that he was approached several times by Varney and asked to join the union. He recalled that Varney spoke to him three times about the cost of joining the union. Two of those occasions were essentially private conversations in which Varney asked Falconer "... if you want to pay a dollar and sign a union card or would you rather pay forty-five dollars or more down the road." From this statement, Falconer understood that Varney was trying to save his fellow employees' money by encouraging them to pay a dollar rather than forty-five dollars "if and when the union got in." The other occasion when Falconer heard Varney discuss the cost of joining the union, Varney was addressing a group of twenty to twenty-five employees outside the employ entrance to the plant after the completion of Falconer's shift. On that occasion, Varney was handing out some sheets, discussed unionization and at that time also said "we would have to pay a dollar and sign a card. If not, when the union got in it would cost forty-five or more dollars down the road." Falconer was present for approximately thirty minutes of that meeting but did not stay until it ended. He testified many questions were asked by employees during that meeting, but could not recall any questions about the union's fee structure. On none of these three occasions did Varney make any reference to a collective agreement, a contract or negotiations. Falconer further testified that he felt he always had a choice whether to join or not to join the union, but that he did not think he had any choice about paying initiation fees. Falconer was aware that during that period of time the CAW was con-



ducting meetings, and that he could have gone to those meetings and asked questions if he wanted to. Falconer chose not to attend such meetings because he was not interested in joining the union.

37. Varney denied making any of the statements attributed to him by Falconer. His testimony was that there were a lot of rumours in the plant including a rumour that it would cost more to join the union later. Varney testified that he tried to dispel such rumours and told all employees “it was a dollar now and a dollar later”. In his evidence in chief, he stated that he told employees “pay a dollar now and pay a dollar later and if anyone tells you, you’ll pay thirty-five dollars or forty dollars or fifty dollars, don’t believe them, it’s not true”. He testified he stated this because, prior to joining Venture, and while working for another employer which another union was attempting to organize, there were a lot of rumours and confusion about that union’s initiation fees. He therefore asked Dan Flynn, the union organizer about the matter. As a result of this experience, he wanted to ensure that employees were “not misinformed”. Varney testified that he wanted to ensure employees “heard [about these matters] from me so that they don’t hear what’s untrue.” He felt employees should not sign union cards because of the cost. He admitted that employees might be confused about the cost of joining the union but that was because “others were telling them things different from what I said.” In cross-examination however, Varney was unaware that the CAW had a constitution, was not familiar with that constitution and was unable to say when or under what circumstances, initiation or membership fees were increased, or to what amount they would be increased if persons did not join during the organizing drive. At another point in his cross-examination however, he testified that he *thought* employees would be required to pay higher initiation fees if they were hired after a collective agreement had been ratified.

38. Upon balance and after having reviewed the testimony of these two witnesses, their firmness of memory, the consistency of their evidence, their demeanour and their ability to resist the influence of self-interest to modify or explain their testimony, we prefer the evidence of Falconer to that of Varney. We found that Varney’s recollection of events and conversations was selective. He professed specific recall about matters which supported his position but became vague and uncertain in cross-examination when counsel pressed about matters which were, or could prove to be, harmful to the applicant’s case. For example, we found it implausible that a person who professed to know much about the Employee Handbook and who had spent sometime reading the handbook, was unaware of the existence of, or familiar with the terms of the CAW constitution. This notwithstanding that Varney characterized himself as a “leader” of employees who was unafraid and willing to talk for and on behalf of others. It is particularly incredulous in light of Varney’s own testimony that he encouraged people to ask him questions and told them that if he did not know the answer he would find out. We therefore conclude that Varney did in fact make the statements about which Falconer testified and propose to dispose of the matter on that basis.

39. From time to time, trade unions have made use of a two-tiered initiation fee system as an organizing device. This generally involves urging employees to join the union during the organizing drive rather than at some later point at a higher initiation or membership fee. Nothing in the *Labour Relations Act* prohibits the union from reducing its initiation fee during an organizing drive and thereafter charging a higher fee as provided for by its constitution. A union thus commits no unfair labour practice merely by adopting such a system (*Canadian Electric Box and Stampings Limited*, [1964] OLRB Rep. Sept. 284 at 286; *The Kendall Company (Canada) Limited*, [1975] OLRB Rep. August 611). The cases indicate however, that the Board has insisted that the two-tiered system conform to certain requirements. In particular, the Board has stated that “the two-tiered system must allow employees employed at the time of the organizing campaign a reasonable opportunity to join for the lower fee *after* it has been determined whether the union will be certified” (*Haughton Graphics Limited*, [1983] OLRB Rep. Sept. 1464 at 1467; see also *Corporation of*

*the Town of Dunnville*, [1986] OLRB Rep. Jan. 85 at 91). The reason for this requirement is simple. If the higher fee is made to apply before or immediately upon certification of the trade union, there is cause for the Board to doubt “whether employees have joined the union of their own free choice, or simply ... to avoid the risk of being required to pay the full amount of the initiation fee if the union is successful.” Thus in *Haughton Graphics*, *supra* the Board after reference to *Alex Henry*, [1977] OLRB Rep. May 288, stated at page 1466:

11. The basis of the Board’s concern is set out in plain terms in an earlier portion of the decision:

10. The statute permits the Board to certify applicant trade unions to represent employees based upon written authorizations involving the payment of at least \$1.00 where such “membership documents” are properly executed and witnessed and where the application is supported by a declaration made by a knowledgeable official, declaring that the monies were paid as the membership documents indicate. See for example Form 9 and sections 1(1)(1) and 103(2)(j) of the Act. Thus, the Board relies on the execution of such membership evidence as an indication of the true wishes of employees and where more than 55 percent of the employees in the bargaining unit are members of the trade union, the Board will usually certify the applicant without a representation vote. However, because of the “hearsay” quality of membership cards, a fact demanded by the membership secrecy section of the Act (see section 111(1)), conduct by organizers that obscures the primary reason why an employee signed a membership card is of concern to the Board.

The Board accordingly sent a clear signal that a “special” initiation fee to eliminate the financial impediment to organizing would continue to be acceptable; but not to the point where the same device may be held out as the threat of a “penalty” to those employees who would refrain from joining prior to the union becoming certified. The union, in other words, must not use this organizing tool in such a way as to cause the Board to doubt whether employees have joined the union of their own free choice, or simply as insurance to avoid the risk of being required to pay the full amount of the initiation fee if the union is successful. The proper question is whether the employees wish to become part of the trade union or not, and organizing campaigns ought to be won or lost on this basis. Any two-level system of initiation fees causes a problem for the Board so long as the higher level is made to apply *before or immediately upon certification* of the trade union. In order to prevent this organizing device from being a distorting factor in assessing employees’ true wishes, the two-tiered system must allow all employees employed at the time of the organizing campaign a reasonable opportunity to join for the lower fee *after* it has been determined whether the union will be certified. This is recognized to be already the practice of at least certain of the trade unions in the province, and conformity to it by others would seem to be no more than the Act requires. The practice of the present applicant, in fact, is entirely in conformity with the Board’s requirements. The issue which arises here, however, is the manner in which the applicant has communicated its practice to the employees of the respondent.

(See also *Trim Trends Canada Limited*, [1986] OLRB Rep. Sept. 1312 at 1313 and *Corporation of the Town of Dunnville*, *supra*, at page 91).

40. Even if the union’s practice conforms with the Board’s requirements as stated above, the use of the two-tiered system may still be a distorting factor in assessing employees’ true wishes if the union by its conduct leaves employees with the impression that its practice is other than it really is. The issue before us therefore is the manner in which the union’s practice has been communicated to the employees. Did the practice employed in this instance mislead “the reasonable employee” so that we ought to refuse to rely on all or part of the membership evidence (see *Leon’s Furniture Limited*, [1982] OLRB Rep. March 404 at 407), or order the taking of a representation vote. In this regard, as is the case when the Board is faced with other improper conduct during the course of an organizing campaign, the Board’s jurisprudence distinguishes between statements made by full-time union organizers and statements made by rank and file employees.

41. In *Alex Henry & Son Limited, supra*, a statement was made by a union organizer that the employees could join for two dollars now but that it would cost fifty dollars later. The Board noted that this would only be so if (a) the union was later successful in negotiating a union shop contract with the employer and (b) the union's constitution and by-laws provided for a higher post-certification initiation fees which the union would then be unable or unwilling to waive. The Board held that the union official's failure to make these clarifications was "latently, if not patently misleading", and amounted to "tacit misrepresentation on the part of the union representative". (See page 290). While the statement itself did not amount to "intimidation or coercion" within the meaning of what is now section 70 of the Act, the fact that it was made by a union official could lead a reasonable employee to join the union in the belief "that upon the union being certified he would have no alternative but to pay the higher fee if he wanted to keep his job". (See page 290). A vote was directed in view of the doubt raised with respect of the membership evidence. In *Leon's Furniture Limited, supra*, the Board elaborated on the *Alex Henry* principle as follows:

20. While [in *Alex Henry*] there had been no explicit linking of the higher initiation fee to an employee's job security, the Board found that an employee might reasonably see this link and therefore held that the full-time union organizer is under a duty to explain in detail how his statement might come to pass. Once having raised a topic that relates to job security and amounts to a significant financial enticement, there is an affirmative obligation on the organizer to be totally candid. Therefore, in *Alex Henry* the Board concluded that the bald statement "\$2.00 now or \$50.00 later" crosses the boundaries of acceptable salesmanship. However, instead of prohibiting a two tier initiation fee structure for the purposes of an organizing campaign, the Board has instead required complete disclosure on how it would impact on the employee who refuses to sign a membership card *before the trade union is certified*. This, it seems to us, is a reasonable approach given the reality that many trade unions customarily reduce their initiation fees for the purposes of organizing campaigns.

42. The Board went on to note however that a union official's failure to make complete disclosure will not always cause the Board to doubt the membership evidence. Thus, the Board stated:

... We are not willing to exercise our discretion and order a representation vote every time there is some confusion on the nature of union security, initiation fees and dues obligations. People who are asked to join the union are expected to be able to sort out most of the confusion by asking questions before they act. If they do not, this Board is reluctant to treat them any differently than they are treated when acting in a broader commercial context." (See *Leons Furniture Limited, supra* at page 413).

43. Where a union official attempted "to actively use the [initiation fee] differential as a sale's tactic and to leave the impression that employees would be required to pay the higher amount if they did not join the applicant during its organizing campaign", the Board disregarded the membership cards collected by that union official. (See *Trim Trends Canada Limited, supra*). On the other hand, where a union official had neglected to clarify what was meant by "later" after advising employees that they may as well pay a dollar now, because they would have to pay ten dollars later, the Board did not disregard the membership evidence collected by the union official because it found that there was no intention to mislead employees or to "use a two-tiered initiation fee as an organizing tool". The union official only made the statement in response to a question raised by two employees about the cost of later joining the union, and had not on his own initiative raised the matter of the two-tiered system.

44. In the facts and circumstances before us, the reference to a two-tiered fee system was made by a rank and file employee while soliciting membership cards. The test for determining whether the membership evidence is unreliable as a result of this is to determine whether the actions of the collector were "such as would unduly influence a reasonable employee" (see *Green*



*Giant of Canada Limited*, *supra*, at 379; see also *Leons Furniture Limited*, *supra* at page 407 and *Thames Steel Construction Ltd.*, [1980] OLRB Rep. April 545 at 553. It is in the context of this test that the identity of the persons making references to the two-tiered fee system is important for the “reasonable” employee may not accept as authoritative, and therefore may not be influenced by a fellow employee’s representation, although the same “reasonable” employee might be influenced if the statement were to be made by a union official.

45. In *Crenmar Services Limited*, *supra*, the Board distinguished the position of the union official from that of the rank of file employee as follows:

Unlike the situation with a union official a rank-and-file employee is not in a position to seek to achieve the consequences of any statements he may make during a union organizing campaign. Further, employees upon hearing any statements made by rank-and-file employees concerning what a union might do in the future can always check out the accuracy of those statements with a responsible union official before signing a membership application. Having regard to these considerations, the Board is generally less willing to infer that a reasonable employee is likely to be properly [sic: improperly?] influenced into signing a membership card on the basis of statements made by a rank and file employee than it is with respect to the statements made by a union official.

(at 52)

46. In *Canadian Electric Box and Stampings Limited*, *supra*, employees who were soliciting union membership on behalf of the applicant told other employees that if they did not join the union and pay a \$1.00 initiation fee it would cost them between \$25.00 and \$75.00 after certification. In that case the Board wrote at p. 407:

...If a union can do this [i.e. reduce its initiation fee for an organizing drive] then the suggestion that it will do so cannot of itself be an unfair labour practice especially where the suggestion is made by persons who are not officers or representatives of the union. In any event, such suggestions could not be construed as threats since the persons making them were known to have no power to enforce them. In this case, the Director of Organization of the applicant union stated at a union meeting that the initiation fee would not be increased after certification.

The conduct of the employee members of the applicant against whom the above allegations were made in this case is not the type of conduct which in our opinion, could be classified as intimidation or coercion of the type found in the *Milnet Mines Limited Case*, Canadian Labour Law Reporter, Transfer Binder '49-'54, ¶17,063, *Canadian Fabricated Products Limited Case*, Canadian Labour Law Reporter, Transfer Binder '49-'54, ¶17,090, in which cases threats were made which were of a type which could reasonably be carried out and would have adversely influenced the average employee.

(See also *Green Giant of Canada Limited*, *supra*; *The Kendall Company (Canada)*, *supra*, *Hancock Sand & Gravel Limited*; [1978] OLRB Rep. Oct. 928; *Bond Structural Steel (1965) Ltd.*, [1979] OLRB Rep. Dec. 1137; *Thames Steel Construction Ltd.*, *supra*; *Corporation of the Town of Dunnville*, *supra*).

47. In the circumstances of this case, we are of the view that neither Falconer nor any other “reasonable” employee would be influenced by Varney’s statements. Varney was a fellow employee and, notwithstanding his role in the organizing campaign, could not be perceived to have any special status with the union. He was not a person who would be perceived as being able to achieve the consequences which the Board has found are implicit in the link between higher initiation fees and job security where the two-tiered fee structure is referred to by a union official. Varney was absent from the working environment at the plant for a significant period of time during the crucial week preceding the filing of the application. He was not the sole collector. Having observed Varney during his own testimony, and after consideration of the description or character-

ization of Varney from the other employee witnesses who testified (i.e. “excitable” and “loud”), we have concluded that the reasonable employee would perceive this as no more than a partisan “pitch”. The evidence falls short of establishing that Varney actively and intentionally used the two-tiered fee structure as an organizing tool. Nor does it establish that it was used as any express or implicit threat to job security. Although there is no evidence to suggest that Varney attempted to explain or clarify what he meant by “down the road”, neither does the evidence disclose that the statements were used as a sales tactic to leave the impression that employees would *have to* pay the higher fee if they chose not to join the union during the organizing campaign, or that failure to do so would result in the dismissal of employment if higher fees were not paid at a later time. Falconer himself felt that he always had the choice as to whether he would join the union, and merely acknowledged that he knew that *if* he joined the union he would be required to pay initiation fees.

48. From the totality of the evidence it is clear that during the organizing campaign there was a lot of discussion about the union amongst the employees. There were also several written communications from the company to the employees regarding unionization. Some of the letters sent by the company to its employees *also* raised the issue of membership fees and dues. For example in a question and answer format letter sent to employees, the employer writes:

Question: If the union comes in to negotiate, what would it ask for?

Answer: The union would ask for compulsory union membership so that *all of you* would have to join the union and pay dues, initiation fees, perhaps assessments, fines and other charges... *or be fired.*

A similar comment was made in a letter sent by the employer to the employees on February 4, 1988 where the employer states “in return for a mere promise to represent your interest, it will demand that you be required to join the union and pay initiation fees and union dues -- or be fired.” In other letters sent to employees the company urges employees to alternatively notify management “If anyone causes you any trouble at work or in your home, or threatens you or puts you under pressure to join the union”, or urges employees that “Further, since you will be legally bound by the Union’s Constitution and Local Union By-Laws by signing this card, I would suggest that you ask the paid union organizers for a copy of these documents and read them before you sign.”

49. The “reasonable” employee faced with these events and surrounding circumstances can seek to clarify any misunderstandings or misconceptions he or she may have. Falconer acknowledged that if he had so desired, he could have attended meetings of the employees called by the union. He could also have spoken to those union officials who handed out leaflets outside the plant. The company itself proposed that course of action. For that matter, he could simply have called the toll free telephone number displayed on that leaflet. Had he done any of these things and asked questions he might have ascertained if and when, and under what circumstances, he would be required to pay the higher initiation fees. If Varney’s statements had caused any confusion or misunderstanding in Falconer’s mind, or the mind of any other reasonable employee, the employees had full opportunity to seek clarification. As the Board noted in *Hancock Sand & Gravel Limited, supra*, at paragraph 15:

15. The Board considers that it would be unrealistic to expect the same standard from the rank-and-file organizer as from the full-time union official. It is reasonable to assume that the ordinary employee is less conversant with the operation of union security provisions. If less than a full explanation is provided by him, moreover, its impact upon other employees is likely to be less than where the statements of a full-time union official suffer from the same defect. As the Board indicated in *Crenmar Services Limited*, [1978] OLRB Rep. Jan. 48, the rank-and-file organizer is not likely to be perceived by his fellow employee as being in a position to seek to achieve the consequences of any statements he may make during a union organizing campaign.

Where employees discuss the merits of joining a union among themselves, it does not seem unreasonable to expect that a few misconceptions might arise, some lending support to the union and some working the other way. We consider that employees are quite capable of dealing with such misconceptions by seeking any necessary clarification, and then making an informed decision as to whether they wish to join a union.

For these reasons we concluded that in these circumstances, the Board should not discount the membership evidence collected by Varney or order a representation vote because there is some doubt about the true wishes of the employees who signed membership cards.

50. Finally, we turn to the allegation that in an “Information Bulletin” dated March 31, 1988 prepared by the applicant and issued to employees in the bargaining unit, the applicant stated:

The collective bargaining will add to what is presently in effect, because by law the company cannot cut your wages and/or benefits once the union has applied for certification.

Counsel submitted that this statement was misleading because it conveyed the false impression that certification creates a permanent freeze against downward changes in terms and conditions of employment. It was argued that the cumulative effect of this “misrepresentation” combined also with the intimidation and “misrepresentation” in respect of the two-tiered fee structure was sufficient to “taint” the membership evidence filed.

51. In our view, the statements made in this communication sent by the applicant is inaccurate. It does not however amount to misrepresentation sufficient to cast doubt upon the voluntariness of the membership evidence submitted. It amounts to no more than partisan salesmanship. It is inaccurate to the same extent as certain statements contained in the various letters which the employer sent to the employees such as:

Recently, paid-union organizers have been handing out “information” and asking Venture’s employees to sign membership cards. While it is their legal right to convince or *deceive* you into joining a union, I ask that you consider that decision with great care and caution.

[Emphasis added].

In another communication the employer writes:

Unions try very hard to get cards signed by employees. They have used these cards in many cases to force employees into the union and to force companies to bargain with them, even *after they have lost* an Ontario Labour Relations Board election.

Similarly, the references to union demands for a closed shop provision in the communications to which we have already referred, are not entirely accurate in view of the fact that it is quite possible for the applicant to merely require the payment of dues from employees in the bargaining unit without requiring membership in the union.

52. In our view, these various statements are part of the electioneering which often occurs during an organizing campaign. The Board does not police the organizing campaign, and does not consider the truth or falsity of campaign literature and speeches by or on behalf of either side *unless*, the ability of the employees to evaluate such campaign material is impaired because of coercion, intimidation, threats, promises or undue influence or misrepresentation or the Board has doubt as to whether the membership evidence is a voluntary expression of the wishes of the employees. The evidence is sufficient for this Board to find that employees who signed membership evidence were not improperly influenced in deciding for themselves whether or not they wished to



join the applicant. This is not a fundamental misrepresentation which would cause us to doubt the voluntariness of the membership evidence filed.

53. For all of these reasons we found that the membership evidence submitted in support of this application was sufficient and therefore certified the applicant union.

---

**1398-83-R; 1399-83-R; 1503-83-M; 0916-84-U (Court File No. A80/89) 556631**  
Ontario Limited, carrying on business as **G.P. Construction**, Applicant v. The International Brotherhood of Electrical Workers, Local 1687, and The Ontario Labour Relations Board, Respondents

**Judicial Review - Related Employer - Unfair Labour Practice - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, *inter alia*, the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court - Application for leave to appeal to the Court of Appeal dismissed**

Board Decision found at [1986] OLRB Rep. May 617 (December 15, 1987 decision unreported); Divisional Court decision found at [1989] OLRB Rep. June 696.

*Court of Appeal, Grange, Finlayson, Tarnopolsky, October 2, 1989:*

The Record was endorsed as follows: Extension of time is granted. Leave to appeal is denied, with costs to the Respondent.

---

**0277-87-G (Court File No. A81/89) Harbridge and Cross Limited, Applicant v. Ontario Council of the International Brotherhood of Painters and Allied Trades and Ontario Labour Relations Board, Respondents**

**Construction Industry Grievance - Judicial Review - First grievance dismissed following request to withdraw late in proceedings - No cause of action or issue estoppel in regards to this grievance - Whether Painters acquired bargaining rights by means of a working agreement signed between the Toronto Building and Construction Trades Council and the respondent - Respondent held bound to painters provincial agreement - Breach of sub-contracting clause - Application for leave to appeal to the Court of Appeal dismissed**

Board decision found at [1988] OLRB Rep. April 391. Divisional Court Decision found at [1989] OLRB Rep. July 824.

*Court of Appeal, Brooke, Craig, Galligan, October 16, 1989:*

(No written endorsement) The motion for leave to appeal was dismissed.

---









## CASE LISTINGS SEPTEMBER 1989

	PAGE
1. Applications for Certification .....	205
2. Applications for First Contract Arbitration .....	213
3. Applications for Declaration of Related Employer.....	213
4. Sale of a Business .....	214
5. Union Successor Rights .....	214
6. Applications for Declaration Terminating Bargaining Rights.....	215
7. Applications for Declaration of Unlawful Strike .....	216
8. Applications for Declaration of Unlawful Strike (Construction Industry) .....	216
9. Complaints of Unfair Labour Practice .....	216
10. Applications for Religious Exemption.....	219
11. Financial Statement .....	219
12. Jurisdictional Disputes.....	219
13. Applications for Determination of Employee Status.....	219
14. Complaints under the Occupational Health and Safety Act.....	220
15. Colleges Collective Bargaining Act.....	220
16. Construction Industry Grievances .....	220
17. Applications for Reconsideration of Board's Decision .....	223





## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING SEPTEMBER 1989

### APPLICATIONS FOR CERTIFICATION

#### Bargaining Agents Certified Without Vote

**3195-88-R:** Teamsters Local No. 938 (Applicant) v. The Corporation of the City of Gloucester (Respondent) v. The Association of the Municipal Employees (Intervener)

Unit: "all employees of the respondent in the City of Gloucester employed in the Recreation and Parks Department, save and except foremen, persons above the rank of foreman, office, clerical and technical staff, casual employees, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (59 employees in unit) (*Having regard to the agreement of the parties*)

**0176-89-R:** Milk & Bread Drivers, Dairy Employees, Caterers & Allied Employees Local No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. William Neilson Ltd./Ltee. (Respondent)

Unit: "all employees of the respondent at its Ottawa plant, save and except foremen, persons above the rank of foreman, office staff, operating engineers, firemen and helpers, employees in any bargaining unit for which any trade union, including the applicant herein, holds bargaining rights as of April 19, 1989, and summer students employed during the school vacation period" (2 employees in unit) (*Having regard to the agreement of the parties*)

**0213-89-R:** International Union of Operating Engineers, Local 793 (Applicant) v. D. Lafreniere Builders Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and in all other sectors in the District of Kenora including the Patricia Portion, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**0334-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Canadian Star Aluminum, Division of 486458 Ontario Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (23 employees in unit)

**0961-89-R:** International Brotherhood of Painters & Allied Trades, Local 1824 (Applicant) v. Ainsworth Developments Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all glaziers and glaziers apprentices in the employ of the respondent in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township),

excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**0971-89-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Tartu Inc. (Respondent)

Unit: "all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

**0972-89-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Cher-Lynn Homes (Aurora) Inc. (Respondent)

Unit: "all construction labourers in the employ of the respondent in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**0976-89-R:** Carpenters & Allied Workers, Local 27 United Brotherhood of Carpenters & Joiners of America (Applicant) v. Murphy Construction, Division of 833833 Ontario Ltd. General Contractors (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all other sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (20 employees in unit)

**1012-89-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Arnott Construction Ltd. and Arnott Building Systems (Collingwood) Inc. (Respondent) v. Group of Employees (Objectors)

Unit: "all construction labourers, in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

**1028-89-R:** United Brotherhood of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 800 (Applicant) v. O.J. Pipelines Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in all sectors of the construction industry within a radius of 81 kilometres (approximately 50 miles) of the Timmins Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foreman and persons above the rank of non-working foreman" (6 employees in unit)

**1035-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Tartu Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all other sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (20 employees in unit)



cial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1117-89-R:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters & Joiners of America (Applicant) v. 568127 Ontario Inc. c.o.b. as Ultramar Carpentry & Finishing (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all other sectors of the construction industry, excluding the industrial, commercial and institutional sector, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

**1119-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Dineen Construction Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit) (*Clarity Note*)

**1142-89-R:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Woodbridge Foam Corporation (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent in Whitby, Ontario, save and except foreman/team leaders, persons above the rank of foreman/team leader, office and sales staff, engineers, process technicians, sample coordinators and students employed during the school vacation period" (110 employees in unit) (*Having regard to the agreement of the parties*)

**1148-89-R:** Labourers' International Union of North America, Local 506 (Applicant) v. G. D. Hanna Inc. (Respondent)

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical, technical and sales staff" (37 employees in unit) (*Having regard to the agreement of the parties*)

**1210-89-R:** Energy & Chemical Workers Union (Applicant) v. 659367 Ontario Inc. c.o.b. as G & S General Contractors (Respondent) v. International Brotherhood of Electrical Workers, Local 115 (Intervener)

Unit: "all employees of the respondent working in and out of the village of Morrisburg, save and except forepersons, those above the rank of foreperson, office and clerical staff, and persons employed in the construction industry" (21 employees in unit) (*Having regard to the agreement of the parties*)

**1220-89-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Kontour Interiors (Respondent)

Unit: "all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton

within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

**1235-89-R:** United Steelworkers of America (Applicant) v. Maxville Manor (Respondent) v. Group of Employees (Objectors)

Unit #1: "all employees of the respondent in the Village of Maxville, save and except supervisors, persons above the rank of supervisor, registered and graduate nurses, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (83 employees in unit) (*Having regard to the agreement of the parties*)

Unit #2: "all employees of the respondent in the Village of Maxville regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, registered and graduate nurses, office and clerical staff" (43 employees in unit) (*Having regard to the agreement of the parties*)

**1254-89-R:** United Food & Commercial Workers International Union (Applicant) v. 724342 Ontario Ltd. (Respondent)

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto, save and except forepersons, persons above the rank of foreperson, office and sales staff, students employed during the school vacation period, and employees in bargaining units for which any trade union held bargaining rights as of August 16, 1989" (45 employees in unit) (*Having regard to the agreement of the parties*)

**1257-89-R:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. Brown Shoe Company of Canada Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all office employees of the respondent at Sterling, Ontario, save and except office manager and persons above the rank of office manager" (6 employees in unit) (*Having regard to the agreement of the parties*)

**1260-89-R:** Energy & Chemical Workers Union (Applicant) v. The Board of Trustees of the Sarnia Public Library & Art Gallery (Respondent)

Unit: "all employees of the respondent in the City of Sarnia, save and except department heads and curator, persons above the rank of department head and curator, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (27 employees in unit) (*Having regard to the agreement of the parties*)

**1264-89-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Relax Hotels & Resorts Ltd. c.o.b. as Relax Plaza, Windsor (Respondent)

Unit #1: "all employees of the respondent employed at Relax Plaza, 33 Riverside Drive East, Windsor, save and except supervisors, those above the rank of supervisor, office staff, accounting staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (8 employees in unit) (*Having regard to the agreement of the parties*)

Unit #2: "all employees of the respondent regularly employed at Relax Plaza, 33 Riverside Drive East, Windsor, for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors and those above the rank of supervisor, office staff and accounting staff" (18 employees in unit) (*Having regard to the agreement of the parties*)

**1287-89-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Mediacolor Photo Laboratories Inc. (Respondent)

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and persons regularly employed for not more than 24 hours per week" (3 employees in unit) (*Having regard to the agreement of the parties*)

**1298-89-R:** Labourers' International Union of North America, Local 183 (Applicant) v. R.E.D.G. Construction Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1301-89-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Peter Scott Contracting Ltd. (Respondent)

Unit: "all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1306-89-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Steelcore Construction Co. Ltd. (Respondent)

Unit: "all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1310-89-R:** International Brotherhood of Painters & Allied Trades, Local 205 (Applicant) v. Westdale Painting & Decorating Ltd. (Respondent)

Unit: "all journeymen and apprentice painters in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice painters in the employ of the respondent in all other sectors of the construction industry (that is, excluding the industrial, commercial and institutional sector) in the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Township of Nassagaweya, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

**1312-89-R:** International Brotherhood of Painters & Allied Trades, Local 1891 (Applicant) v. C.O.S.T. Construction Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all painters and painters' apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit) (*Clarity Note*)

**1331-89-R:** Labourers' International Union of North America, Local 607 (Applicant) v. 539711 Ontario Ltd. o/a Sentinel Contracting Ltd. (Respondent)

Unit: "all construction labourers in the employ of the respondent in the industrial, commercial and institu-



tional sector of the construction industry in the Province of Ontario and all construction labourers in the employ of the respondent in all other sectors in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**1338-89-R:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 (Applicant) v. Rural Mechanical Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (40 employees in unit)

**1365-89-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Cima Excavating Co. (Respondent)

Unit: "all employees of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same and employees engaged as surveyors, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1403-89-R:** Labourers' International Union of North America, Local 607 (Applicant) v. Ledcor Industries Ltd. (Respondent)

Unit: "all construction labourers in the employ of the employer in the Township of Devitt, and the surrounding Townships of Casgrain, Shannon, Sankey, Kendall, Eilber, Shetland, Staunton and Barker in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**1439-89-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Can-Pave, Division of 713059 Ontario Ltd. (Respondent)

Unit: "all employees of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same and employees engaged as surveyors, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**1447-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 93 (Applicant) v. Rose Mechanical Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all other sectors in the the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1481-89-R:** International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Ind-Comm Electric (Respondent)

Unit: “all electricians and electricians’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians’ apprentices in the employ of the respondent in all other sectors in the the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

### **Bargaining Agents Certified Subsequent to a Post-Hearing Vote**

**0551-89-R:** Ontario Nurses’ Association (Applicant) v. Hanover & District Hospital (Respondent)

Unit: “all registered and graduate nurses employed in a nursing capacity by the respondent, save and except head nurses, persons above the rank of head nurse, and those regularly employed for not more than 24 hours per week” (27 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	28
Number of persons who cast ballots	27
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	10

**0875-89-R:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. T.C.C. Bottling Ltd. (Respondent)

Unit: “all employees of the respondent in Orangeville, save and except supervisors, persons above the rank of supervisor, office and clerical staff” (39 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters’ list	37
Number of persons who cast ballots	34
Number of ballots marked in favour of applicant	30
Number of ballots marked against applicant	4

### **Applications for Certification Dismissed Without Vote**

**3573-87-R:** Labourers’ International Union of North America, Local 183 (Applicant) v. Avro Group, Avro Construction Inc., Avro Developments Ltd., Avro Management Ltd. and Woodpark Development Ltd. (Respondents) v. United Brotherhood of Carpenters & Joiners of America, Local 27 (Intervener) (4 employees in unit)

**0863-89-R:** Labourers’ International Union of North America, Ontario Provincial District Council (Applicant) v. Arnott Construction Ltd. and Arnott Building Systems (Collingwood) Inc. (Respondent) v. Group of Employees (Objectors) (42 employees in unit)

**1242-89-R:** Canadian Union of Public Employees (Applicant) v. Kent County Roman Catholic Separate School Board (Respondent) v. Group of Employees (Objectors) (94 employees in unit)

**1271-89-R; 1272-89-R:** Textile Processors, Service Trades, Health Care Professional & Technical Employees International Union, Local 351 (Applicant) v. Commonwealth Hospitality Ltd. (Respondent) v. Group of Employees (Objectors) (175 employees in unit)

### **Applications for Certification Dismissed Subsequent to a Post-Hearing Vote**

**0302-89-R:** United Steelworkers of America (Applicant) v. Forasco Inc. (Respondent) v. Group of Employees (Objectors)

Unit: “all employees of the respondent in the City of Barrie, save and except managers, persons above the

rank of manager, office, clerical and outside sales staff, inventory control staff and students employed during the school vacation period" (36 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on list as originally prepared by employer	36
Number of persons who cast ballots	30
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	19

**0580-89-R:** International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Allan Michaels Electric Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices in the employ of the respondent in all other sectors in the the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	10

**0695-89-R:** International Brotherhood of Painters & Allied Trades (Applicant) v. Nickel Belt Aluminium of Sudbury Ltd. (Respondent)

Unit: "all employees of the respondent in the City of Sudbury, save and except foremen, persons above the rank of foreman, office, clerical and sales staff" (10 employees in unit)

Number of names of persons on list as originally prepared by employer	11
Number of persons who cast ballots	11
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	8

### Applications for Certification Withdrawn

**1614-87-R:** International Woodworkers of America (Applicant) v. Atway Transport Inc. (Respondent)

**0335-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Canadian Star Aluminum, Division of 486458 Ontario Inc. (Respondent)

**0522-89-R:** Ontario Public Service Employees Union (Applicant) v. London & District Association for the Mentally Retarded (Respondent)

**0644-89-R:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 800 (Applicant) v. Mallett Transport Ltd. and Mallett Kraft Ltd. (Respondents) v. Canadian Paperworkers Union and its Locals 32 & 37 and International Brotherhood of Electrical Workers, Local 1687 (Intervenors)

**0655-89-R:** Canadian Union of Public Employees (Applicant) v. The Governing Council of the University of Toronto (Respondent)

**0819-89-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Century Interiors Ltd. (Respondent)



**0847-89-R:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 786 (Applicant) v. Roy Talevi's General Welding Inc. (Respondent) v. Group of Employees (Objectors)

**1167-89-R:** Service Employees' International Union, Local 532 affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. Burlington Association for Community Living (Respondent)

**1193-89-R:** Association of Canadian Craftspeople (Applicant) v. Moviecorp XX Inc. (Respondent) v. Canadian Association of Motion-Picture and Electronic Recording Artists (C.A.M.E.R.A.), Local 81 C.L.C., and National Association of Broadcast Employees & Technicians (NABET), Local 700 (Intervenors)

**1206-89-R:** United Steelworkers of America (Applicant) v. Ground Control (Sudbury) Ltd. (Respondent)

**1266-89-R:** Amalgamated Transit Union, Local 616, Ronald E. Seguin, President (Applicant) v. Transit Windsor (Respondent)

**1300-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Skymark Construction (Respondent)

**1313-89-R:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 736 (Applicant) v. K.W. Reinforcing (Respondent)

**1317-89-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Town of Southampton (Respondent)

**1337-89-R:** United Rubber, Cork, Linoleum & Plastic Workers of America, AFL:CIO:CLC: (Applicant) v. Goodyear Canada Inc. (Respondent)

**1376-89-R; 1377-89-R:** Service Employees' Union, Local 268, affiliated with S.E.I.U., AF of L, C.I.O. and C.L.C. (Applicant) v. Hogarth-Westmount Hospital (Respondent)

**1406-89-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 674970 Ontario Ltd. c.o.b. as T & J Electrical Services (Respondent)

**1474-89-R:** United Steelworkers of America (Applicant) v. Aboutown Transportation Ltd. (Respondent)

## APPLICATIONS FOR FIRST CONTRACT ARBITRATION

**1029-89-FC:** Retail, Wholesale & Department Store Union, AFL:CIO:CLC (Applicant) v. Multitech Warehouse Direct (Ontario) (Respondent) (*Withdrawn*)

**1226-89-FC:** United Brotherhood of Carpenters & Joiners of America, Local 3054 (Applicant) v. Royal Homes Ltd. (Respondent) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**1103-88-R:** Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing & Sheet Metal Co. Ltd., and Nedlaw Roofing Ltd. (Respondents) (*Dismissed*)

**2369-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. First Plazas Inc., et al, Cambridge Leaseholds Ltd., et al, and Sevendon Holdings Ltd. (Respondents) (*Dismissed*)

**3050-88-R:** Carpenters District Council of Toronto & Vicinity United Brotherhood of Carpenters & Joiners of America, on behalf of Local 27 (Applicant) v. Contact Construction Ltd., 767428 Ontario Ltd. c.o.b. as A.V. Concrete Forming Systems Ltd. Citicom Inc. (Respondents) v. Form Work Council of Ontario, Labourers' International Union of North America, Local 183 (Intervenors) (*Withdrawn*)

**0077-89-R:** International Brotherhood of Painters & Allied Trades, Local 557 (Applicant) v. Santiag's Old Country Painting & Decorating, Jose Antonio Manques Santiago c.o.b. as Always Painting (Respondents) (*Granted*)

**0321-89-R:** Milk & Bread Drivers, Dairy Employees, Caterers & Allied Employees, Local No. 647 (Applicant) v. Frito-Lay Canada Ltd. Frito-Lay Canada, A Division of Pepsi-Cola Canada Ltd. Hostess Food Products Ltd. The Hostess Frito-Lay Company (Respondent) v. Retail, Wholesale & Department Store Union, AFL:CIO:CLC (Intervener) (*Withdrawn*)

**0597-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 2222 (Applicant) v. Ariss Construction Inc. and Western Foundry Company Ltd. (Respondents) (*Withdrawn*)

**0641-89-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Ariss Construction Inc. and Western Foundry Company Ltd. (Respondents) (*Withdrawn*)

**1159-89-R:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. 831430 Ontario Ltd. c.o.b. as North Bramalea Pharmacy (Respondent) (*Withdrawn*)

## SALE OF A BUSINESS

**1103-88-R:** Sheet Metal Workers' International Association, Local 562 (Applicant) v. Walden Roofing & Sheet Metal Co. Ltd., and Nedlaw Roofing Ltd. (Respondents) (*Dismissed*)

**2369-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. First Plazas Inc., et al, Cambridge Leaseholds Ltd., et al, and Sevendon Holdings Ltd. (Respondents) (*Dismissed*)

**3050-88-R:** Carpenters District Council of Toronto & Vicinity United Brotherhood of Carpenters & Joiners of America, on behalf of Local 27 (Applicant) v. Contact Construction Ltd. 767428 Ontario Ltd. c.o.b. as A.V. Concrete Forming Systems Ltd., Citicom Inc. (Respondents) v. Form Work Council of Ontario, Labourers' International Union of North America, Local 183 (Interveners) (*Withdrawn*)

**3226-88-R:** Service & Commercial Employees Union, Local 272 (Applicant) v. Ottawa/Carleton French Language School Board (Respondent) v. The Ottawa Board of Education Employees' Union; The Carleton Roman Catholic Separate School Board; The Carleton Board of Education; Carleton Roman Catholic Separate School Board Employees' Association; Labourers' International Union of North America, Local 527 (Interveners) (*Withdrawn*)

**0077-89-R:** International Brotherhood of Painters & Allied Trades, Local 557 (Applicant) v. Santiag's Old Country Painting & Decorating, Jose Antonio Manques Santiago c.o.b. as Always Painting (Respondents) (*Granted*)

**0641-89-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Ariss Construction Inc. and Western Foundry Company Ltd. (Respondents) (*Withdrawn*)

**1158-89-R:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. North Bramalea Pharmacy (Respondent) (*Granted*)

## UNION SUCCESSOR RIGHTS

**0716-89-R:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Brunner Manufacturing (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**0133-89-R:** Robert St. John (Applicant) v. Great Lakes Fishermen & Allied Workers' Union (Respondent) v. Murray & Ken Loop Fishery Ltd. (Intervener)

Unit: "all employees of Murray & Ken Loop Fishery Ltd. employed in fishing in and out of Wheatley, save and except those above the rank of boat captain" (15 employees in unit) (*Granted*)

Number of names of persons on list as originally prepared by employer	15
Number of persons who cast ballots	14
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	8

**0668-89-R:** Doreen Costello (Applicant) v. United Food & Commercial Workers International Union, Local 175 (Respondent)

Unit: "all employees of Skelhorns (sic) Bus Lines Limited in the Town of Petawawa regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, and office staff" (18 employees in unit) (*Granted*)

Number of names of persons on list as originally prepared by employer	17
Number of persons who cast ballots	16
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	16

**0880-89-R:** Les Park (Applicant) v. I.W.A. of Canada, Local 1-700 (Respondent) v. Pack All International Inc. (Intervener)

Unit: "all employees of Pack All International Inc. at Mississauga, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (15 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	10
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	9

**0949-89-R:** Danny Palermo, Dale Reid, Ken Francis, Greg Colosimo, Guilio Tombolan, John McKay, Randy Chrusz, Taras Lesyk, Richard McKay (Applicants) v. I.W.A. International Woodworkers (Respondent) v. M.N.T. Builders Ltd. (Intervener) (*Withdrawn*)

**1222-89-R:** Cathrine Natale & Patricia Edge (Applicants) v. United Steelworkers of America (Respondent) (11 employees in unit) (*Granted*)

**1255-89-R:** Craig Smith (Applicant) v. United Food & Commercial Workers International Union, Local 114P-3 (Respondent) v. Sunny Orange Division of McCain Foods Ltd. (Intervener) (37 employees in unit) (*Dismissed*)

**1259-89-R:** Kim Hanchar (Applicant) v. Office & Professional Employees International Union, Local 343 (Respondent) v. Ontario Secondary School Teachers' Fraternal Society (Intervener) v. Group of Employees (Objectors) (4 employees in unit) (*Granted*)

**1267-89-R:** Melvin Cadwell (Local 252) (Applicant) v. National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (C.A.W.) (Respondent) (*Withdrawn*)

**1293-89-R:** Anita Cosburn (Applicant) v. P.T.U. President: Karen Hicks (Respondent) (*Withdrawn*)



**1339-89-R:** U.S.W.A., Local 8748 (Applicant) v. U.S.W.A. (Respondent) (*Withdrawn*)

**1414-89-R:** Donald Imeson (Applicant) v. CAW, Local 444 Marine Division Formerly known as Great Lakes Fisherman & Allied Workers Union (Trade Union) (4 employees in unit) (*Granted*)

## **APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE**

**1510-89-U:** Pigott Construction Ltd. (Applicant) v. United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 67 and Fred Wilson (Respondents) (*Withdrawn*)

**1352-89-U:** British American Bank Note Inc. (Applicant) v. Graphic Communications International Union, Local 588 - Ottawa, Examiners Bindery 2, Graphic Communications International Union, Local 588 - Ottawa Lithographers, Graphic Communications International Union, Local 588 - Ottawa Cutters - Bindery 1, International Association of Machinists & Aerospace Workers, Lodge 412, Ottawa Steel Plate Printers, Local 6 (Respondents) (*Granted*)

**1353-89-U:** British American Bank Note Inc. (Applicant) v. Jean Donahue, Fay De Jong, James Roney, Jean-Pierre Routliffe, Joe Czempiel, Richard Rothwell, Wayne Spears, David Hurley, Stanley Hill and Richard Murray (Respondents) (*Granted*)

## **APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)**

**0419-89-U:** Guild Electric Ltd. (Applicant) v. International Union of Operating Engineers, Local 793, John Monti, Joseph Kennedy, Mr. Montagnese, Mr. Ricciuto (Respondents) v. IBEW Construction Council of Ontario (Intervener) (*Dismissed*)

**1509-89-U:** Pigott Construction Ltd. (Applicant) v. United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 67 (Respondent) (*Granted*)

## **COMPLAINTS OF UNFAIR LABOUR PRACTICE**

**0484-87-U:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Complainant) v. Mollenhauer Ltd. (Respondent) (*Dismissed*)

**0746-88-U:** Cesare Dicesare (Complainant) v. United Steelworkers of America (Respondent) v. Zalev Brothers Ltd. (Intervener) (*Withdrawn*)

**0768-88-U:** National Elevator & Escalator Association (Complainant) v. International Union of Elevator Constructors, J. Warner Baxter; International Union of Elevator Constructors, Local 50, Ernest Shaw and Thomas McCann; International Union of Elevator Constructors, Local 90 and Peter Verrege; International Union of Elevator Constructors, Local 96 and Joseph Kennedy; York Elevators Ltd. and Henry Render; Capital Elevators Ltd. and Ken Anderson; Televator Ltd. and Andy Johnson; Canadian Escalator & Elevator Service Company Ltd. and John Ainsworth; Classic Elevators and Jack Parks (Respondents) v. J. Schindler Elevator Corporation (Intervener) (*Dismissed*)

**2150-88-U:** Fred McCalla/Darryl Marks (Complainant) v. Globe Graphic Communications Inc. (Respondent) (*Withdrawn*)

**2306-88-U:** Teamsters Local No. 419, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Hickeson-Langs (Respondent) (*Withdrawn*)

**2980-88-U; 3090-88-U:** Canadian Union of Public Employees and its Local 65 (Complainant) v. Fort Frances & District Association for the Mentally Retarded (Respondent) (*Withdrawn*)

**3049-88-U:** Carpenters District Council of Toronto & Vicinity United Brotherhood of Carpenters & Joiners of America, on behalf of Local 27 (Complainant) v. Contact Construction Ltd. 767428 Ontario Ltd. c.o.b. as A.V. Concrete Forming Systems Ltd., Citicom Inc., Labourers' International Union of North America, Local 183 and Ontario Form Work Council (Respondents) (*Withdrawn*)

**3229-88-U:** Barry Wistow (Complainant) v. Local 100 of the Ontario Nurses' Association and Victoria Hospital Corporation (Respondent) (*Dismissed*)

**0146-89-U:** Percy Austin (Complainant) v. United Steelworkers of America, Local 7276, and Phillips Cables Ltd. (Respondents) (*Dismissed*)

**0147-89-U:** Paul Balkos (Complainant) v. Lawson Packaging Toronto, A Division of the Lawson Mardon Group Ltd. and Graphic Communications International Union, Local 500M (Respondents) (*Dismissed*)

**0289-89-U:** The Association of Allied Health Professionals: Ontario (Complainant) v. Toronto East General & Orthopaedic Hospital Inc. (Respondent) (*Dismissed*)

**0307-89-U:** United Brotherhood of Carpenters & Joiners of America, Local 3054 (Complainant) v. Royal Homes Ltd. (Respondent) (*Withdrawn*)

**0395-89-U:** United Steelworkers of America (Complainant) v. GSW Inc. (Respondent) (*Withdrawn*)

**0514-89-U:** International Union of Operating Engineers, Local 793 (Complainant) v. Lafraniere Builders Ltd. (Respondent) (*Withdrawn*)

**0646-89-U:** Labourers' International Union of North America, Local 1059 (Complainant) v. Co-Fo Concrete Forming Construction Ltd. (Respondent) (*Dismissed*)

**0775-89-U:** John Clark (Complainant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (*Withdrawn*)

**0813-89-U:** Hotels, Clubs, Restaurants, Taverns, Employees Union, Local 261 (Complainant) v. Marriott Corporation (Ottawa University Cafeterias) (Respondent) (*Withdrawn*)

**0830-89-U:** Karen Goom (Complainant) v. Graphic Communications International Union, Local 466 and Lily Cup Inc. (Respondents) (*Withdrawn*)

**0831-89-U:** Ben Bouwmans (Complainant) v. Ontario Hydro and CUPE, Local 1000 Ontario Hydro Employees Union (Respondents) (*Withdrawn*)

**0873-89-U:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 786 (Complainant) v. Roy Talevi's General Welding Inc. (Respondent) (*Withdrawn*)

**0896-89-U:** Ontario Secondary School Teachers' Federation (Complainant) v. The Muskoka Board of Education (Respondent) (*Withdrawn*)

**0897-89-U:** Ontario Secondary School Teachers' Federation (Complainant) v. The Timiskaming Board of Education (Respondent) (*Withdrawn*)

**0912-89-U:** Labourers' International Union of North America, Local 183 (Complainant) v. York Condominium Corporation No. 202 (Respondent) (*Withdrawn*)

**0937-89-U:** United Steelworkers of America (Complainant) v. Simmons Ltd. (Respondent) (*Withdrawn*)

**0978-89-U:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Complainant) v. N.I. Wheel, a Division of Flo-Con (Respondent) (*Withdrawn*)

**0987-89-U:** United Food & Commercial Workers International Union, Local 530P (Complainant) v. Maple Leaf Mills Ltd. (Respondent) (*Withdrawn*)

**1083-89-U:** Canadian Paperworkers Union (Complainant) v. Rub A Dub Dry Cleaners & Laundrymat (Respondent) (*Withdrawn*)

**1056-89-U:** Donna Wootton (Complainant) v. Jim Kormos and George Brown College (Respondent) (*Dismissed*)

**1103-89-U:** United Food & Commercial Workers International Union, Local 175 (Complainant) v. Boshnick Investments Ltd. o/a Ridley Square IGA (Respondent) (*Withdrawn*)

**1108-89-U:** Brad Shoemaker (Complainant) v. International Brotherhood of Painters & Allied Trades, Local 1824 (Respondent) (*Withdrawn*)

**1109-89-U:** Retail, Wholesale & Department Store Union, AFL:CIO:CLC: (Complainant) v. Semac Industries (Respondent) (*Withdrawn*)

**1122-89-U:** London & District Service Workers' Union, Local 220 (Complainant) v. Kitchener-Waterloo Hospital (Respondent) (*Withdrawn*)

**1139-89-U:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Complainant) v. Griffith Laboratories Ltd. (Respondent) (*Withdrawn*)

**1140-89-U:** Myrtle Tomlinson R.N. (Complainant) v. Union, Local 157 ONA (Respondent) (*Withdrawn*)

**1170-89-U:** Labourers' International Union of North America, Local 183 (Applicant) v. Cher-Lynn Homes Inc. (Respondent) (*Withdrawn*)

**1173-89-U:** United Food & Commercial Workers International Union, Local 175 (Complainant) v. Loeb I.G.A. Montgomery (Respondent) (*Withdrawn*)

**1176-89-U:** Canadian Union of Public Employees, Local 3 (Outside Group) (Complainant) v. The Sault Ste. Marie Public Utilities Commission (Respondent) (*Withdrawn*)

**1178-89-U:** Erik Hansink (Complainant) v. General Motors of Canada, Oshawa Truck Plant, Management (Respondent) (*Withdrawn*)

**1182-89-U:** Milk & Bread Drivers, Dairy Employees, Caterers & Allied Employees Local No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. William Neilson Ltd. (Respondent) (*Withdrawn*)

**1207-89-U:** Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 183 (Complainant) v. Keith Holdsworth Consulting Ltd. (Respondent) (*Granted*)

**1223-89-U:** Paron Metal Fabricating Inc. (Complainant) v. Brian Gregory Wild (Respondent) (*Withdrawn*)

**1288-89-U:** Textile Processors, Service Trades, Health Trade, Professional & Technical Employees International Union, Local 351 (Complainant) v. Alamo Linen Rentals Ltd. (Respondent) (*Withdrawn*)

**1309-89-U:** Craig Pugsley (Complainant) v. Grant Const. Company & LIUNA, Local 506 (Respondents) (*Withdrawn*)

**1332-89-U:** Randy H. Revie (Complainant) v. International Association of Machinists & Aerospace Workers (Respondent) (*Dismissed*)



**1372-89-U:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Complainant) v. Tartu Inc. General Contractors (Respondent) (*Withdrawn*)

**1393-89-U:** United Food & Commercial Workers International Union, Local 175 (Complainant) v. Brown Shoe Company of Canada Ltd. (Respondent) (*Withdrawn*)

**1411-89-U:** Ljubomir Sasic (Complainant) v. The National Association of Broadcast Employees & Technicians, Local 700 (Respondent) (*Dismissed*)

**1412-89-U:** Sheridan Gibson (Complainant) v. Teamsters Union, Local 938 (Respondent) (*Withdrawn*)

**1444-88-U:** Great Lakes Fishermen & Allied Workers' Union (Complainant) v. Four Brothers Fishing Co. Ltd. (Respondent) (*Withdrawn*)

## APPLICATIONS FOR RELIGIOUS EXEMPTION

**0158-89-M:** Domenico Simone (Applicant) v. Canadian Brotherhood of Railway, Transport & General Workers (Respondent Trade Union) v. GLIS (A Division of Glascar Ltd.) (Respondent Employer) (*Granted*)

**0928-89-M:** Ebelina K. Witten (Applicant) v. Canadian Union of Public Employees, Local 839 (Respondent Trade Union) v. Chedoke - McMaster Hospitals, Chedoke Hospital Employees (Respondent Employer) (*Granted*)

**1395-89-M:** Glenn A. Gilmore (Applicant) v. CAW TCA (Respondent Trade Union) v. John Deere Welland Works (Respondent Employer) (*Withdrawn*)

## FINANCIAL STATEMENT

**1136-89-M:** Jeffrey Drew Cantin (Complainant) v. Service Employees Union, Local 210 (Respondent) (*Withdrawn*)

## JURISDICTIONAL DISPUTES

**1938-86-JD:** West York Construction Ltd. (Complainant) v. Carpenters District Council of Toronto & Vicinity on behalf of Locals 27 & 1304, United Brotherhood of Carpenters & Joiners of America (Respondent) v. Metropolitan Toronto Apartment Builders' Association (Intervener #1) v. Labourers' International Union of North America, Local 183 (Intervener #2) v. The Ontario Form Work Association (Intervener #3) v. The Form Work Council of Ontario (Intervener #4) (*Withdrawn*)

**2697-87-JD:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada), CAW Local 1837 - Unit 2 (Complainant) v. Northern Telecom Canada Ltd. (Respondent) (*Withdrawn*)

**3043-87-JD:** Integral Erection Services Ltd. (Complainant) v. United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 and International Association of Bridge, Structural & Ornamental Ironworkers, Local 721 (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**0623-89-M:** Canadian Union of Public Employees and its Local 2210 (Applicant) v. The Regional Municipality of Haldimand-Norfolk (Respondent) (*Withdrawn*)

**0714-89-M:** Canadian Union of Public Employees and its Local 115 (Applicant) v. The Corporation of the City of Brockville (Respondent) (*Withdrawn*)

**0888-89-M:** Canadian Union of Public Employees, Local 840 - City of York Staff (Applicant) v. The Corporation of the City of York (Respondent) (*Dismissed*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**2094-88-OH:** Jack McCarty, Jack Boulaine and Ontario Public Service Employees Union (OPSEU) (Complainant) v. Crown in Right of Ontario (Ministry of Environment) and Mr. Pat Gillespie, Agent of the Employer (Respondent) (*Withdrawn*)

**3176-88-OH:** Steve Prodnovic (Complainant) v. Stan-Canada Inc. (Respondent) (*Withdrawn*)

**0196-89-OH:** Delner Stewart (Complainant) v. Eastmaque Gold Mines Ltd. (Respondent) (*Withdrawn*)

**0939-89-OH:** Teamsters Chemical Energy & Allied Workers, Local 154 (Complainant) v. Norton Advanced Ceramics of Canada Inc. (Respondent) (*Withdrawn*)

**1177-89-OH:** Robert James Barnett (Complainant) v. Corporation of the City of Sault Ste. Marie (Respondent) (*Withdrawn*)

**1228-89-OH:** Michael Erich Hundecck (Complainant) v. (Hyland Ltd.) Aleck Embury (Respondents) (*Withdrawn*)

## COLLEGES COLLECTIVE BARGAINING ACT

**0726-89-U:** Ontario Public Service Employees Union and its Local 558 (Complainant) v. Centennial College (Respondent) (*Withdrawn*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**0483-83-M:** Carpenters' District Council of Toronto & Vicinity on behalf of Locals 27 & 1304, United Brotherhood of Carpenters & Joiners of America (Applicant) v. West York Construction Ltd. (Respondent) v. Metropolitan Toronto Apartment Builders' Association (Intervener #1) v. Labourers' International Union of North America, Local 183 (Intervener #2) v. The Ontario Form Work Association (Intervener #3) v. The Form Work Council of Ontario (Intervener #4) (*Withdrawn*)

**3567-87-G:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (Applicant) v. The Electrical Power Systems Construction Association (Respondent) (*Granted*)

**1324-88-G; 1434-89-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Town-wood Homes Ltd. (Respondent) (*Withdrawn*)

**2649-88-G:** International Brotherhood of Electrical Workers, Local 1788 (Applicant) v. Electrical Power Systems Construction Association (Respondent) (*Dismissed*)

**0038-89-G:** Ontario Provincial Conference of the International Union of Bricklayers & Allied Craftsmen (Applicant) v. W.A.K. Masonry (Respondent) (*Granted*)

**0475-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. J.R. Noel Plastering Ltd. (Respondent) (*Withdrawn*)

**0497-89-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Co-Fo Concrete Forming Construction Ltd. (Respondent) (*Dismissed*)

**0528-89-G:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Creative Concrete Inc. (Respondent) (*Granted*)

**0530-89-G:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Stone & Webster (Respondent) (*Withdrawn*)

**0598-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2222 (Applicant) v. Ariss Construction Inc. (Respondent) (*Withdrawn*)

**0642-89-G:** Labourers' International Union, Local 1059 (Applicant) v. Ariss Construction Inc. and Western Foundry Company Ltd. (Respondents) (*Withdrawn*)

**0715-89-G:** Sheet Metal Workers' International Association, Local 562 - Ontario Sheet Metal Workers' & Roofers Conference (Applicant) v. Mark 1 Erectors (Respondent) (*Granted*)

**0768-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Nation Dry-wall Contractors Ltd. (Respondent) (*Withdrawn*)

**0994-89-G:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 721 (Applicant) v. Connie Steel Inc. (Respondent) (*Withdrawn*)

**1026-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Bot Construction (Canada) Ltd. (Respondent) (*Withdrawn*)

**1027-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Soubliere Int. (Respondent) (*Withdrawn*)

**1101-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. James Kemp Construction Ltd. (Respondent) (*Withdrawn*)

**1116-89-G:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Novoeste Masonry Ltd. (Respondent) (*Granted*)

**1151-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 787 (Applicant) v. Cowley's Central Refrigeration & Air Conditioning Ltd. (Respondent) (*Granted*)

**1175-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Nation Dry-wall Contractors Ltd. (Respondent) (*Withdrawn*)

**1215-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Williams Contracting Ltd. (Respondent) (*Granted*)

**1232-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Hume Contractors Ltd. (Respondent) (*Withdrawn*)

**1250-89-G:** Labourers' International Union of North America, Local 607 (Applicant) v. Tom Jones Construction Inc. (Respondent) (*Withdrawn*)

**1270-89-G:** International Brotherhood of Painters & Allied Trades, Local 1824 (Applicant) v. Ainsworth Glass & Mirror, a division of Ainsworth Developments Ltd. & Ainsworth Developments Ltd. c.o.b. as Alpine Craftsman (Respondent) (*Withdrawn*)

**1277-89-G:** International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Peterson Electric Co. Ltd. (Respondent) (*Withdrawn*)

**1278-89-G:** The Ontario Provincial Conference of the International Union of Bricklayers & Allied Craftsmen and Local #7 Canada (Applicant) v. Needham & Son (Respondent) (*Granted*)



**1279-89-G:** The Ontario Provincial Conference of the International Union of Bricklayers & Allied Craftsmen and Local #7 Canada (Applicant) v. Novel Masonry (Respondent) (*Withdrawn*)

**1290-89-G:** International Brotherhood of Painters & Allied Trades, Local 1891 (Applicant) v. Helm Interiors (Respondent) (*Granted*)

**1291-89-G:** Labourers' International Union of North America, Local 1089 (Applicant) v. Dafoe Floor (London) Ltd. (Respondent) (*Withdrawn*)

**1295-89-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Dufferin Roofing Ltd. (Respondent) (*Granted*)

**1302-89-G:** The Ontario Provincial Conference of the International Union of Bricklayers & Allied Craftsmen and Local #7 Canada (Applicant) v. Joe Arban Contractors Ltd. (Respondent) (*Granted*)

**1303-89-G:** Resilient Floor Workers, Local 2965 United Brotherhood of Carpenters & Joiners of America (Applicant) v. Shandon Associates Ltd. (Respondent) (*Withdrawn*)

**1308-89-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Lundrigans Construction Ltd. c.o.b. Comstock International Ltd. (Respondent) (*Withdrawn*)

**1318-89-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. L.D.A. Construction Ltd. (Respondent) (*Granted*)

**1322-89-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Bacardi Foundations Ltd. (Respondent) (*Withdrawn*)

**1325-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 1316 (Applicant) v. Helm Interiors Ltd. (Respondent) (*Granted*)

**1326-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Helm Interiors Ltd. (Respondent) (*Granted*)

**1327-89-G; 1244-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 785 & 1316 (Applicant) v. Helm Interiors Ltd. (Respondent) (*Granted*)

**1351-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Gabrielle D'Angelo & Sons Drywall Ltd. (Respondent) (*Granted*)

**1359-89-G:** International Brotherhood of Painters & Allied Trades, Local 205 (Applicant) v. National Painting & Decorating (Respondent) (*Withdrawn*)

**1371-89-G:** A Council of Trade Unions Acting as Representative and Agent of Teamsters, Local 230 and Labourers' International Union of North America, Local 183 (Applicant) v. Westwood Drain Ltd. (Respondent) (*Granted*)

**1373-89-G:** International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 230 (Applicant) v. Bushell & Mitchell Haulage Ltd. (Respondent) (*Granted*)

**1392-89-G:** International Brotherhood of Painters & Allied Trades, Local 114 (Applicant) v. National Painting & Decorating (Hamilton) Ltd. (Respondent) (*Withdrawn*)

**1399-89-G:** Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local 880 (Applicant) v. Pavex Canada Ltd. (Respondent) (*Withdrawn*)

**1419-89-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Keith Holdsworth Consulting Ltd. (Respondent) (*Granted*)

**1437-89-G:** Christian Labour Association of Canada (Applicant) v. Mortlock Construction (1978) Ltd. (Respondent) (*Withdrawn*)

**1460-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Antinori Inc. (Respondent) (*Granted*)

**1480-89-G:** Resilient Floor Workers, United Brotherhood of Carpenters & Joiners of America, Local 2965 (Applicant) v. E.C.I. Ltd. (Respondent) (*Granted*)

## **APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION**

**3011-88-U:** Stamatis Stathis (Complainant) v. Canadian Automobile Workers, Local 195 (Respondent) v. Fabricated Steel Products (Windsor) Ltd. (Intervener) (*Dismissed*)









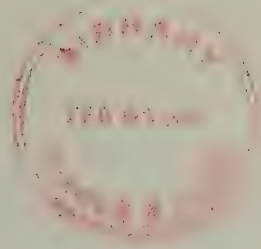
*Ontario Labour Relations Board,  
400 University Avenue,  
Toronto, Ontario  
M7A 1V4*

ISSN 0383-4778





CA20N  
LR  
-054



# ONTARIO LABOUR RELATIONS BOARD REPORTS

November 1989



## ONTARIO LABOUR RELATIONS BOARD

<i>Chair</i>	M.G. MITCHNICK
<i>Alternate Chair</i>	R.O. MACDOWELL
<i>Vice-Chairs</i>	M. BENDEL
	L. DAVIE
	N.V. DISSANAYAKE
	R.A. FURNESS
	O.V. GRAY
	R.J. HERMAN
	B. HERLICH
	R.D. HOWE
	B. KELLER
	P. KNOPF
	J. McCORMACK
	M. NAIRN
	K. O'NEIL
	K. PETRYSHEN
	N.B. SATTERFIELD
	I.M. STAMP
	G. SURDYKOWSKI
	S.A. TACON

### *Members*

J. ANDERSON	T. MEAGHER
B.L. ARMSTRONG	R.R. MONTAGUE
C.A. BALLENTINE	J.W. MURRAY
F.C. BURNET	W.S. O'NEILL
W.A. CORRELL	D.A. PATTERSON
K.S. DAVIES	H. PEACOCK
M. EAYRS	R.W. PIRRIE
A.R. FOUCAULT	J. REDSHAW
W.N. FRASER	K.V. ROGERS
W. GIBSON	J.A. RONSON
P.V. GRASSO	M.A. ROSS
A. HERSHKOVITZ	M. ROZENBERG
M. JONES	J.A. RUNDLE
F. KELLY	G.O. SHAMANSKI
J. KENNEDY	R.M. SLOAN
H. KOBRYN	E.G. THEOBALD
J. KURCHAK	J. TRIM
J. LEAR	S. WESLAK
D.A. MacDONALD	W.H. WIGHTMAN
W.J. McCARRON	N.A. WILSON
C. McDONALD	D.G. WOZNIAK
R.D. McMURDO	

<i>Registrar</i>	T.A. INNISS
<i>Board Solicitors</i>	K.A. MacDONALD
	P.S. TOOP



# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**A Monthly Series of Decisions from the  
Ontario Labour Relations Board**

**Cited [1989] OLRB REP. NOVEMBER**

**EDITOR: PERCY TOOP**

Selected decisions of particular reference value are also reported in *Canadian Labour Relations Boards Reports*, Butterworth & Co., Toronto.

Typeset, Printed and Bound by Union Labour in Ontario



## CASES REPORTED

1. Cambridge, Corporation of the City of; Re A.T.U., Local 1608, Russell Abernathy, Raymond Blackmore, and Russell Falkiner .....	1095
2. Caterpillar of Canada Ltd.; Re C.A.W. and its Local 252, Ted Murphy and members of the respondent Local Trade Union employed as salaried employees by Caterpillar of Canada Ltd. ....	1099
3. Eastern Construction Company Limited; Re The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 172 Restoration Steeplejacks .....	1105
4. Mollenhauer Limited; Re C.J.A., Local 27; Re L.I.U.N.A., Local 183; Re Metropolitan Toronto Apartment Builders Association.....	1112
5. Ontario Bus Industries Inc.; Re C.A.W.; Re Group of Employees .....	1115
6. Rexway Sheet Metal Limited, U.A., Local 46 and D. Clark, Watts & Henderson Limited, English & Mould Limited; Re S.M.W., Local 30 .....	1154
7. Senstar Corporation; Re Salaried Employees Alliance ComDev .....	1159
8. Steen Contractors Limited, L.I.U.N.A., Local 597 and; Re U.A., Local 463; Re Milne and Nicholls/Vanbots Joint Venture; Re L.I.U.N.A., Ontario Provincial District Council; Re Valentine Enterprises Contracting, a Division of Valentine Developments Limited; Re Metropolitan Toronto Sewer and Watermain Contractors Association; Re Ontario General Contractors Association; Re The Ontario Pipe Trades Council of the U.A.; Re Canadian Automatic Sprinkler Association; Re U.A., Local 853; Re International Brotherhood of Electrical Workers Construction Council of Ontario.....	1173
9. Supreme Carpentry Inc.; Re C.J.A., Local 27.....	1181
10. Trans Continental Printing Inc.; Re Teamsters' Union, Local 91; Re Group of Employees ..	1187
11. W.G. Gallagher Construction Limited; Re The Ontario Council of P.A.T.; Re P.A.T., District Council 46; Re W.G. Gallagher Construction Co. and W.G. Gallagher Construction Limited .....	1191





## SUBJECT INDEX

- Bargaining Rights - Sale of a Business - Company buying patent and assets for security technology  
 - Successorship not precluded by failure to buy manufacturing equipment since patents and  
 expertise essence of commercial activity - Board finding company would have no difficulty  
 in obtaining equipment or contracting out - Bargaining rights for "greater Ottawa area"  
 extending to company facilities at Carp - Unit description to be interpreted liberally since  
 expansion outside Ottawa possible and parties not intending to limit bargaining rights to  
 existing locations - Company arguing union constitution not allowing membership of  
 employees of successor in sold business - Not necessary for union to show could have been  
 certified to represent employees in question - Declaration of successorship and intermin-  
 gling - Representation vote ordered
- SENSTAR CORPORATION; RE SALARIED EMPLOYEES ALLIANCE COMDEV... 1159
- Bargaining Unit - Certification - Construction Industry - Dependent Contractor - Employee -  
 Board finding workers to be dependent contractors - Board declining to determine whether  
 worker engaged by others employee or dependent contractor and whether included in unit -  
 Unit description unaffected and majority support in any case - Parties having right to refer  
 employee status question to Board at later date - Certificate issuing
- SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 ..... 1181
- Certification - Bargaining Unit - Construction Industry - Dependent Contractor - Employee -  
 Board finding workers to be dependent contractors - Board declining to determine whether  
 worker engaged by others employee or dependent contractor and whether included in unit -  
 Unit description unaffected and majority support in any case - Parties having right to refer  
 employee status question to Board at later date - Certificate issuing
- SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 ..... 1181
- Certification - Natural Justice - Practice and Procedure - Union and employer agreeing on  
 expanded bargaining unit to include group specifically excluded in posted notice to employ-  
 ees - Natural justice requiring notice to all persons possibly affected by certification - Posted  
 notice of certification application of itself insufficient notice to group specifically excluded  
 from unit description - Board ordering reposting with expanded bargaining unit description  
 and extending terminal date
- TRANS CONTINENTAL PRINTING INC.; RE TEAMSTERS' UNION, LOCAL 91;  
 RE GROUP OF EMPLOYEES ..... 1187
- Certification - Practice and Procedure - Pre-Hearing Vote - Representation Vote - Sole voter  
 requesting Board not count ballot - Board already ordering counting of ballot in previous  
 decision - Eligible voters aware of possibility of single vote beforehand in every case - Not  
 open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation  
 against person participating in proceeding - Board to respond quickly to allegations of retal-  
 iation
- MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183;  
 RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION..... 1112
- Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion  
 - Remedies - Interference in trade union found where employer questioned employees  
 about union support, prohibited and punished union solicitation on company property, shut  
 down plant to permit meetings of union opposition, transferred union supporters from reg-  
 ular jobs, posted foremen at hotel where union meeting taking place - Interference and  
 intimidation found where employer monitored union leafletting at plant gate - Certification

## II

inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment files for solicitation, and provision to trade union of updated list of employees names and addresses

ONTARIO BUS INDUSTRIES INC.; RE C.A.W.; RE GROUP OF EMPLOYEES .....

1115

Collective Agreement - Construction Industry - Construction Industry Grievance - Union local claiming voluntary recognition from Working Agreement signed by Council ten years prior to local's existence - Council unable to be agent of non-existent principal - Agreement not binding employer and union local - Grievance referral dismissed

EASTERN CONSTRUCTION COMPANY LIMITED; RE THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172 RESTORATION STEEPLEJACKS ...

1105

Collective Agreement - Strike - "No board" report issuing for two bargaining units on same day - Both units striking - Second unit having "bridge clause" in agreement providing for continuation until thirty days after effective date of new agreement with first unit - Employer seeking unlawful strike declaration for second unit - Act providing bridge provisions terminable on thirty days notice - Written notice not required - Actual notice given by union - Application dismissed

CATERPILLAR OF CANADA LTD.; RE C.A.W. AND ITS LOCAL 252, TED MURPHY AND MEMBERS OF THE RESPONDENT LOCAL TRADE UNION EMPLOYED AS SALARIED EMPLOYEES BY CATERPILLAR OF CANADA LTD.

1099

Construction Industry - Bargaining Unit - Certification - Dependent Contractor - Employee - Board finding workers to be dependent contractors - Board declining to determine whether worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing

SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 .....

1181

Construction Industry - Collective Agreement - Construction Industry Grievance - Union local claiming voluntary recognition from Working Agreement signed by Council ten years prior to local's existence - Council unable to be agent of non-existent principal - Agreement not binding employer and union local - Grievance referral dismissed

EASTERN CONSTRUCTION COMPANY LIMITED; RE THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172 RESTORATION STEEPLEJACKS ...

1105

Construction Industry - Sector Determination - Installation of storm sewer pipe and catch basins on private property - Characteristics of excavation work a function of purpose of excavation - End use being sewer - Work characteristics distinct and same irrespective of installation on private property - Work typically performed by speciality contractors - Statutory scheme



not requiring Board to exercise discretion with view to enlarging ICI sector - Work within sewers and watermain sector

STEEN CONTRACTORS LIMITED, L.I.U.N.A., LOCAL 597 AND; RE U.A., LOCAL 463; RE MILNE AND NICHOLLSVANBOTS JOINT VENTURE; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE VALENTINE ENTERPRISES CONTRACTING, A DIVISION OF VALENTINE DEVELOPMENTS LIMITED; RE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION; RE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE THE ONTARIO PIPE TRADES COUNCIL OF THE U.A.; RE CANADIAN AUTOMATIC SPRINKLER ASSOCIATION; RE U.A., LOCAL 853; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS CONSTRUCTION COUNCIL OF ONTARIO ..... 1173

Construction Industry Grievance - Collective Agreement - Construction Industry - Union local claiming voluntary recognition from Working Agreement signed by Council ten years prior to local's existence - Council unable to be agent of non-existent principal - Agreement not binding employer and union local - Grievance referral dismissed

EASTERN CONSTRUCTION COMPANY LIMITED; RE THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172 RESTORATION STEEPLEJACKS ... 1105

Dependent Contractor - Bargaining Unit - Certification - Construction Industry - Employee - Board finding workers to be dependent contractors - Board declining to determine whether worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing

SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 ..... 1181

Employee - Bargaining Unit - Certification - Construction Industry - Dependent Contractor - Board finding workers to be dependent contractors - Board declining to determine whether worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing

SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 ..... 1181

Interference in Trade Unions - Certification Where Act Contravened - Intimidation and Coercion - Remedies - Interference in trade union found where employer questioned employees about union support, prohibited and punished union solicitation on company property, shut down plant to permit meetings of union opposition, transferred union supporters from regular jobs, posted foremen at hotel where union meeting taking place - Interference and intimidation found where employer monitored union leafletting at plant gate - Certification inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment files for solicitation, and provision to trade union of updated list of employees names and addresses

ONTARIO BUS INDUSTRIES INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... 1115

Intimidation and Coercion - Certification Where Act Contravened - Interference in Trade Unions - Remedies - Interference in trade union found where employer questioned employees about union support, prohibited and punished union solicitation on company property, shut down plant to permit meetings of union opposition, transferred union supporters from regular jobs, posted foremen at hotel where union meeting taking place - Interference and

#### IV

intimidation found where employer monitored union leafletting at plant gate - Certification inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment files for solicitation, and provision to trade union of updated list of employees names and addresses

ONTARIO BUS INDUSTRIES INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... 1115

Jurisdictional Dispute - Remedies - Settlement - Unfair Labour Practice - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint

REXWAY SHEET METAL LIMITED, U.A., LOCAL 46 AND D. CLARK, WATTS & HENDERSON LIMITED, ENGLISH & MOULD LIMITED; RE S.M.W., LOCAL 30... 1154

Natural Justice - Certification - Practice and Procedure - Union and employer agreeing on expanded bargaining unit to include group specifically excluded in posted notice to employees - Natural justice requiring notice to all persons possibly affected by certification - Posted notice of certification application of itself insufficient notice to group specifically excluded from unit description - Board ordering reposting with expanded bargaining unit description and extending terminal date

TRANS CONTINENTAL PRINTING INC.; RE TEAMSTERS' UNION, LOCAL 91; RE GROUP OF EMPLOYEES ..... 1187

Practice and Procedure - Certification - Natural Justice - Union and employer agreeing on expanded bargaining unit to include group specifically excluded in posted notice to employees - Natural justice requiring notice to all persons possibly affected by certification - Posted notice of certification application of itself insufficient notice to group specifically excluded from unit description - Board ordering reposting with expanded bargaining unit description and extending terminal date

TRANS CONTINENTAL PRINTING INC.; RE TEAMSTERS' UNION, LOCAL 91; RE GROUP OF EMPLOYEES ..... 1187

Practice and Procedure - Certification - Pre-Hearing Vote - Representation Vote - Sole voter requesting Board not count ballot - Board already ordering counting of ballot in previous decision - Eligible voters aware of possibility of single vote beforehand in every case - Not open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation against person participating in proceeding - Board to respond quickly to allegations of retaliation

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION..... 1112

Pre-Hearing Vote - Practice and Procedure - Certification - Representation Vote - Sole voter requesting Board not count ballot - Board already ordering counting of ballot in previous decision - Eligible voters aware of possibility of single vote beforehand in every case - Not open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation against person participating in proceeding - Board to respond quickly to allegations of retaliation

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION..... 1112

- Related Employer - Sale of a Business - Union seeking declaration of company's status as successor employer - Sole proprietor signing Working Agreement - Proprietorship business and assets subsequently sold to corporation - Both events transpiring before enactment of sale of business and related employer provisions - Sale of business and related employer provisions neither retroactive nor retrospective - Application dismissed
- W.G. GALLAGHER CONSTRUCTION LIMITED; RE THE ONTARIO COUNCIL OF P.A.T.; RE P.A.T., DISTRICT COUNCIL 46; RE W.G. GALLAGHER CONSTRUCTION CO. AND W.G. GALLAGHER CONSTRUCTION LIMITED ..... 1191
- Remedies - Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Interference in trade union found where employer questioned employees about union support, prohibited and punished union solicitation on company property, shut down plant to permit meetings of union opposition, transferred union supporters from regular jobs, posted foremen at hotel where union meeting taking place - Interference and intimidation found where employer monitored union leafletting at plant gate - Certification inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment files for solicitation, and provision to trade union of updated list of employees names and addresses
- ONTARIO BUS INDUSTRIES INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... 1115
- Remedies - Jurisdictional Dispute - Settlement - Unfair Labour Practice - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint
- REXWAY SHEET METAL LIMITED, U.A., LOCAL 46 AND D. CLARK, WATTS & HENDERSON LIMITED, ENGLISH & MOULD LIMITED; RE S.M.W., LOCAL 30 ... 1154
- Remedies - Strike - Concerted employee refusal to perform voluntary overtime constituting strike - Board reviewing jurisprudence on "overtime bans" and employer remedies - Board amending earlier order to reflect agreement of parties
- CAMBRIDGE, CORPORATION OF THE CITY OF; RE A.T.U., LOCAL 1608, RUSSELL ABERNETHY, RAYMOND BLACKMORE, AND RUSSELL FALKINER ..... 1095
- Representation Vote - Pre-Hearing Vote - Practice and Procedure - Certification - Sole voter requesting Board not count ballot - Board already ordering counting of ballot in previous decision - Eligible voters aware of possibility of single vote beforehand in every case - Not open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation against person participating in proceeding - Board to respond quickly to allegations of retaliation
- MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION ..... 1112
- Sale of a Business - Bargaining Rights - Company buying patent and assets for security technology - Successorship not precluded by failure to buy manufacturing equipment since patents and expertise essence of commercial activity - Board finding company would have no difficulty in obtaining equipment or contracting out - Bargaining rights for "greater Ottawa area" extending to company facilities at Carp - Unit description to be interpreted liberally since expansion outside Ottawa possible and parties not intending to limit bargaining rights to existing locations - Company arguing union constitution not allowing membership of



## VI

employees of successor in sold business - Not necessary for union to show could have been certified to represent employees in question - Declaration of successorship and intermingling - Representation vote ordered

SENSTAR CORPORATION; RE SALARIED EMPLOYEES ALLIANCE COMDEV... 1159

Sale of a Business - Related Employer - Union seeking declaration of company's status as successor employer - Sole proprietor signing Working Agreement - Proprietorship business and assets subsequently sold to corporation - Both events transpiring before enactment of sale of business and related employer provisions - Sale of business and related employer provisions neither retroactive nor retrospective - Application dismissed

W.G. GALLAGHER CONSTRUCTION LIMITED; RE THE ONTARIO COUNCIL OF P.A.T.; RE P.A.T., DISTRICT COUNCIL 46; RE W.G. GALLAGHER CONSTRUCTION CO. AND W.G. GALLAGHER CONSTRUCTION LIMITED ..... 1191

Sector Determination - Construction Industry - Installation of storm sewer pipe and catch basins on private property - Characteristics of excavation work a function of purpose of excavation - End use being sewer - Work characteristics distinct and same irrespective of installation on private property - Work typically performed by speciality contractors - Statutory scheme not requiring Board to exercise discretion with view to enlarging ICI sector - Work within sewers and watermain sector

STEEN CONTRACTORS LIMITED, L.I.U.N.A., LOCAL 597 AND; RE U.A., LOCAL 463; RE MILNE AND NICHOLLSVANBOTS JOINT VENTURE; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE VALENTINE ENTERPRISES CONTRACTING, A DIVISION OF VALENTINE DEVELOPMENTS LIMITED; RE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION; RE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE THE ONTARIO PIPE TRADES COUNCIL OF THE U.A.; RE CANADIAN AUTOMATIC SPRINKLER ASSOCIATION; RE U.A., LOCAL 853; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS CONSTRUCTION COUNCIL OF ONTARIO..... 1173

Settlement - Jurisdictional Dispute - Remedies - Unfair Labour Practice - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint

REXWAY SHEET METAL LIMITED, U.A., LOCAL 46 AND D. CLARK, WATTS & HENDERSON LIMITED, ENGLISH & MOULD LIMITED; RE S.M.W., LOCAL 30... 1154

Strike - Collective Agreement - "No board" report issuing for two bargaining units on same day - Both units striking - Second unit having "bridge clause" in agreement providing for continuation until thirty days after effective date of new agreement with first unit - Employer seeking unlawful strike declaration for second unit - Act providing bridge provisions terminable on thirty days notice - Written notice not required - Actual notice given by union - Application dismissed

CATERPILLAR OF CANADA LTD.; RE C.A.W. AND ITS LOCAL 252, TED MURPHY AND MEMBERS OF THE RESPONDENT LOCAL TRADE UNION EMPLOYED AS SALARIED EMPLOYEES BY CATERPILLAR OF CANADA LTD. 1099

Strike - Remedies - Concerted employee refusal to perform voluntary overtime constituting strike

- Board reviewing jurisprudence on “overtime bans” and employer remedies - Board amending earlier order to reflect agreement of parties

CAMBRIDGE, CORPORATION OF THE CITY OF; RE A.T.U., LOCAL 1608, RUSSELL ABERNETHY, RAYMOND BLACKMORE, AND RUSSELL FALKINER ..... 1095

Unfair Labour Practice - Jurisdictional Dispute - Remedies - Settlement - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint

REXWAY SHEET METAL LIMITED, U.A., LOCAL 46 AND D. CLARK, WATTS & HENDERSON LIMITED, ENGLISH & MOULD LIMITED; RE S.M.W., LOCAL 30 ... 1154





**1819-89-U; 1754-89-U Cambridge, Corporation of the City of, Applicant v. Amalgamated Transit Union, Local 1608, Russell Abernethy, Raymond Blackmore, and Russell Falkiner, Respondents; The Corporation of the City of Cambridge, Applicant v. Amalgamated Transit Union, Local 1608, Russell Abernethy, Raymond Blackmore, and Russell Falkiner, Respondents**

**Remedies - Strike - Concerted employee refusal to perform voluntary overtime constituting strike - Board reviewing jurisprudence on "overtime bans" and employer remedies - Board amending earlier order to reflect agreement of parties**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *D. I. Wakely* and *George Vandermey* for the applicant; *Frank Carere*, *Russell Abernathy*, *Raymond Blackmore* and *Russell Falkiner* for the respondent.

**DECISION OF THE BOARD;** November 1, 1989

1. Board File No. 1819-89-U is an application under section 92 of the *Labour Relations Act*. In the course of the hearing with respect to it on October 30, 1989, the parties agreed, in writing, and filed with the Board, as follows:

The parties to the Application in Board file #1819-89-U agree to dispose of that application by amending the Board order in Board file 1754-89-U in accordance with the attached.

"Russell S. Abernethy"  
R. Abernethy

"George P. Vandermey"  
G. Vandermey  
for City of Cambridge

"Raymond Blackmore"  
R. Blackmore

"Russell Falkiner"  
R. Falkiner

"Frank Carere"  
Local 1608

1. Having regard to the written agreement of the parties dated October 20, 1989, filed, the Board:

- (a) declares that members of the respondent union have engaged in a concerted refusal to work overtime and have thereby engaged in an unlawful strike contrary to the *Labour Relations Act*;
- (b) union, orders R. Abernethy, R. Blackmore and R. Falkiner to cease and desist from engaging in or counselling either a concerted refusal to work overtime or anything else which would constitute or cause an unlawful strike;
- (c) orders, the respondent local union through its officers R. Abernethy, R. Blackmore and R. Falkiner shall sign and deliver in writing to each member of the Local a copy of the following Notice which they shall also post in the employer's premises, all of this no later than Wednesday, November 1, 1989 for a period of 60 days.

TO MEMBERS OF LOCAL 1608

The Ontario Labour Relations Board has found that the members of Local 1608 by a concerted

refusal to work overtime have engaged in an unlawful strike in violation of the *Labour Relations Act*.

The Ontario Labour Relations Board by its direction of October 20/89 and as modified by its order of October 30/89 has ordered the members and officers of Local 1608, R. Abernethy, R. Blackmore and R. Falkiner to immediately cease and desist from engaging in unlawful conduct by encouraging and counselling the members of Local 1608 to engage in a concerted refusal to work overtime.

We have also been ordered by the Ontario Labour Relations Board to advise each of our members in writing and by way of posted notice that their concerted refusal to work overtime is illegal and in violation of the *Labour Relations Act* and is to cease immediately.

We, the officers of Local 1608 have expressly agreed and undertaken both to the Ontario Labour Relations Board and The City of Cambridge to encourage our members to fully cooperate with the employer in the working of overtime.

As an indication of the intention of the officers of this Local to abide by and honour this order of the Board, we intend to cooperate with the employer with respect to working overtime. Any issue arising with respect to the employer's method of distributing overtime will be dealt with through the grievance procedure and not by refusing to work overtime.

"R. Abernethy"

"R. Blackmore"

"R. Falkiner"

October 30, 1989

(The agreement of the parties has been reproduced as filed, without correction.)

2. The nature of labour relations, particularly ongoing relationship between an employer, a trade union and employees bound by a collective agreement, is such that it is always preferable for the parties to an application such as this one to resolve the dispute themselves rather than having the Board adjudicate it for them. Accordingly, and having regard to the agreement of the parties, the Board finds it appropriate to vary its decision in Board File No. 1754-89-U by amending its order dated October 20, 1989 therein to the following:

- (a) The Board declares that members of the respondent union have engaged in the concerted refusal to work overtime and have thereby engaged in an unlawful strike contrary to the *Labour Relations Act*;
- (b) The Board orders the union, Russell Abernethy, Raymond Blackmore, and Russell Falkiner to cease and desist from engaging in or counselling either a concerted refusal to work overtime or anything else which would constitute or cause an unlawful strike;
- (c) The Board orders the respondent trade union, through its officers Russell Abernethy, Raymond Blackmore and Russell Falkiner, to sign and deliver in writing to each member of the Local a copy of following Notice which they shall also post in the employer's premises, all of this no later than Wednesday, November 1st, 1989, for a period of 60 days:

TO MEMBERS OF LOCAL 1608

The Ontario Labour Relations Board has found that the members of Local 1608 by a concerted refusal to work overtime have engaged in an unlawful strike in violation of the *Labour Relations Act*.

The Ontario Labour Relations Board by its direction of October 20/89 and as modified by its order of October 30/89 has ordered the members and officers of Local 1608, R. Abernethy, R.

Blackmore and R. Falkiner to immediately cease and desist from engaging in unlawful conduct by encouraging and counselling the members of Local 1608 to engage in a concerted refusal to work overtime.

We have also been ordered by the Ontario Labour Relations Board to advise each of our members in writing and by way of posted notice that their concerted refusal to work overtime is illegal and in violation of the *Labour Relations Act* and is to cease immediately.

We, the officers of Local 1608 have expressly agreed and undertaken both to the Ontario Labour Relations Board and The City of Cambridge to encourage our members to fully cooperate with the employer in the working of overtime.

As an indication of the intention of the officers of this Local to abide by and honour this order of the Board, we intend to cooperate with the employer with respect to working overtime. Any issue arising with respect to the employer's method of distributing overtime will be dealt with through the grievance procedure and not by refusing to work overtime.

"R. Abernethy"

"R. Blackmore"

"R. Falkiner"

October 30, 1989

3. For the benefit of those affected by these applications, I find it appropriate to repeat and expand on some of the comments I made orally at the conclusion of the hearing on October 30, 1989.

4. The *Labour Relations Act* absolutely prohibits any strike during the effective period of a collective agreement. As the Board emphasized in *Monarch Fine Foods Limited*, [1986] OLRB Rep. May 661, the parties to a collective agreement, and the employees bound by it, are prohibited from engaging in, or threatening to engage in, any strike or lockout activity during the terms of the collective agreement or prior to the completion of the compulsory conciliation process.

5. Section 1(1)(o) of the *Labour Relations Act*, a "strike" is defined as:

"strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output.

Job action designed to pressure an employer with respect to a grievance or bargaining objective is not permitted while a collective agreement is in effect or during the conciliation process. Some employees seem to think that if their collective agreement specifies that overtime is "voluntary" in that it permits them to refuse to work overtime on an individual basis, they may also do so, whether expressly or tacitly, in combination or in concert in order to put pressure on their employer either in support of some bargaining objective or otherwise. *That is not so*. Such a concerted refusal to work overtime constitutes an unlawful strike. In *Watts and Henderson Ltd.*, [1988] OLRB Rep. July 721, the Board declined to apply the reasoning on *MacMillan-Bathurst Inc.*, [1987] OLRB Rep. Dec. 1568 and [1988] OLRB Rep. March 312 and commented, at paragraph 16, on "overtime bans" as follows:

It is well established that a concerted refusal to [work] overtime constitutes a strike within the meaning of the *Labour Relations Act* and, concomitantly, that if such an overtime ban is imposed in an untimely manner (that is, within the term of a collective agreement or during a "freeze" period), such a strike is unlawful within the meaning of sections 92 and 135 of the *Labour Relations Act* (see for example *Canada Packers Inc.*, [1983] OLRB Rep. Sept. 1405, *C & C Yachts Manufacturing Limited*, [1977] OLRB Rep. July 433, *Domtar Packaging Limited*, [1974] OLRB Rep. Dec. 899). The respondents relied heavily upon the Board's recent decision



in *MacMillan-Bathurst Inc.*, [1987] OLRB Rep. Dec. 1568 (application for reconsideration dismissed, [1988] OLRB Rep. March 312). In that case, there was a well-established practice whereby whenever there was a lay-off, those employees not laid off would, pursuant to a local union by-law known to and accepted by the applicant employer, refuse to work overtime for the duration of the lay-off, except with the agreement of the union in emergency situations. The employer had accepted and taken into account this practice for some ten years before applying to the Board for a declaration that such a refusal to work overtime constituted an unlawful strike and for associated relief. Although the Board found that there was an overtime ban and that it had been imposed by the respondents in accordance with a common understanding, it declined to issue any declarations or give any other remedy with respect thereto on the basis that the parties had "... accepted for many years that overtime bans follow lay-offs as a matter of course". *MacMillan-Bathurst Inc.* was distinguishable on the facts. The evidence before the Board in this case did not establish any practice remotely approaching that in *MacMillan-Bathurst Inc.*, or that any of the applicants knew of or accepted the Local 46 by-law upon which the respondents rely, or that, as was the case in *MacMillan-Bathurst Inc.*, they accepted overtime bans. Furthermore, the mere fact that parties have sanctioned, either by specific agreement or by tolerance, a course of conduct in their collective bargaining relationship does not preclude such conduct from being subject to the strike prohibitions in the *Labour Relations Act*. To suggest otherwise would be to permit parties to contract out of the strike prohibitions in the Act, which is not permissible (see, for example, *Toronto Transit Commission*, [1984] OLRB Rep. Dec. 1781). Of course, even if unlawful conduct has occurred, the Board has the discretion, under section 135 (and section 92) of the Act, to determine whether or not it is appropriate, in the circumstances of the case, to issue a declaration or direction with respect thereto. In *MacMillan-Bathurst Inc.*, the Board declined to determine whether an unlawful strike had occurred because it concluded that, in the circumstances of that case, it would not exercise its discretion to issue any declaration or direction with respect thereto in any event.

6. The Board treats allegations of illegal strike activity seriously. So should the persons involved. In the event of an unlawful strike, and employer may seek an number of remedies:

- (1) Under section 92 an employer can seek a cease and desist order enforceable in the Supreme Court of Ontario as an order of the Court. Disobedience can result in fine or imprisonment.
- (2) An employer may seek damages at arbitration for any lost profits.
- (3) An employer can discipline employees who engage in unlawful concerted activity because engaging in a strike is a serious breach of their employment obligations which warrants at least discipline and, in the view of some arbitrators, discharge (see, for example, *Re Oshawa Group Ltd. and Teamsters Union Local 419* (1988) 33 L.A.C. (3d) 97 where the arbitrator upheld a fourteen day suspension with consequent loss of pay for an employee engaging in an illegal strike; see also the unreported decision of Michel Picher involving the same parties released June 30, 1988).
- (4) The employer may seek consent to prosecute and subsequently prosecute employees or the trade union for their breach of the law. A strike is not just a private protest. It is contrary to the *Labour Relations Act*. A successful criminal prosecution may result in fines of up to \$1,000.00 per day for employees and \$10,000.00 per day for the union.

7. The Board also treats any declarations or orders it makes with respect to unlawful strike activity seriously. So do the courts. The courts are not slow to enforce and give effect to directions given by the Board with respect to unlawful strike activity. As indicated above, persons who disobey a Board direction issued with respect to an unlawful strike, and therefore disobey an order of the court (see section 92 of the *Labour Relations Act*) may find themselves before the Supreme Court of Ontario and may, if they are found to have breached directions issued with respect to unlawful strike activity, be fined or imprisoned.

---

**1766-89-U Caterpillar of Canada Ltd., Applicant v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local Union No. 252, Ted Murphy and members of the respondent Local Trade Union employed as salaried employees by Caterpillar of Canada Ltd., Respondents**

**Collective Agreement - Strike - "No board" report issuing for two bargaining units on same day - Both units striking - Second unit having "bridge clause" in agreement providing for continuation until thirty days after effective date of new agreement with first unit - Employer seeking unlawful strike declaration for second unit - Act providing bridge provisions terminable on thirty days notice - Written notice not required - Actual notice given by union - Application dismissed**

**BEFORE:** *R. O. MacDowell*, Alternate Chair.

**APPEARANCES:** *Daniel J. Shields, John Lyons and Jerry Brust* for the applicant; *L. A. MacLean, Ted Murphy, Earl D. Cooper and Fred Simpson* for the respondents.

**DECISION OF THE BOARD;** November 3, 1989

## I

1. This is an application under section 92 of the *Labour Relations Act*. The applicant employer contends that certain of its office employees are engaging in an unlawful strike, and that the respondent trade union has called or authorized that strike. The employer further contends that officials of the union have counselled, procured, supported or encouraged the strike.

2. This application was filed at the end of the business day on Thursday, October 19, 1989. In accordance with its usual practice, the Board abridged the time limits for filing material and expedited the hearing. The matter came on before me on Monday, October 23. At the opening of the hearing counsel for the employer indicated that the company sought no specific remedy against individual employees, but only a declaration that their strike was unlawful and a general cease and desist direction. The union argued, for various reasons (some of which are explored in more detail below) that the strike was not unlawful. At the end of the day, I gave a brief oral decision dismissing the complaint and indicated that a more formal written decision would follow.

## II

3. The argument proceeded on the basis of agreed facts which were either set out in parties' pleadings, or stipulated by counsel. The relevant facts are these.

4. The company operates manufacturing facilities at 100 Sandalwood Parkway West in Brampton, Ontario and at 1550 Caterpillar Road in Mississauga, Ontario. The union is the bargaining agent for *two* bargaining units of the respondents employees: an hourly-rated "plant production" bargaining unit, and a *separate* office, clerical and technical bargaining unit.

5. The collective agreement respecting the hourly rated production employees has expired, and conciliation was unsuccessful. The Minister of Labour did not consider it appropriate to appoint a conciliation board. On October 18, 1989 the hourly rated production employees commenced a legal strike which is still continuing. The office employees went out on strike on the same day. That strike, too, is continuing, and is the subject of the current application.

6. The company does not complain about the conduct of the hourly rated production employees. The company contends that the office workers are on an illegal strike because they are still bound by a collective agreement which contains the following provisions:

“Except as otherwise expressly provided for in this Agreement, this Agreement shall become effective on the first day of the first pay period following its ratification by members of the bargaining unit and shall remain in effect through the later of the:

- (a) September 30, 1989; or
- (b) the 30th day following the effective date of the Agreement covering hourly employees at Caterpillar of Canada Ltd. represented by Local 252 (Certification 14158-68-R, dated October 21, 1968) to succeed the Agreement expiring on August 31, 1989.

In the event either party desires to modify or terminate this Agreement, it shall notify the other party in writing between July 1, 1989 and August 1, 1989. If neither party gives such notice, this Agreement shall run from year to year thereafter until notice of modification or termination is given between July 1 and August 1 in a given year.”

The company maintains that there is, as yet, no plant agreement to replace the one expiring on August 31, 1989 - indeed, that is what the strike of production employees is all about - and that therefore the agreement binding the office employees is still in effect. That being so, any work stoppage is untimely and unlawful.

7. The bargaining history is not disputed and is largely a matter of record.

8. By letter dated June 13, 1989 a representative of the union gave the company notice of its intention to open negotiations for the renewal of the collective agreements in *both* the plant and office units. The union took the position that there should be joint negotiations with a view to concluding a collective agreement covering both units. The company resisted that proposal asserting that there were two bargaining units established by law, and that there should therefore be separate negotiations leading to separate agreements reflecting the situation in each unit.

9. This bargaining posture by the company was a matter of concern to the trade union. In 1987 there had been a bitter strike involving the office employees, at a time when the plant workers were obliged to cross their fellow employees' picket line. The result was confrontation on the picket line and disciplinary action against members of both units. In the union's view, the company was maintaining its “divide and conquer” position in order to weaken the bargaining position of the office unit. Accordingly, in various ways, the union pressed its demand that the two bargaining units be dealt with together.

10. As I have already mentioned, on June 13, 1989 the union gave written notice to bargain in respect of both bargaining units. It continuously demanded joint bargaining (which the company resisted) and submitted its proposals or replies, jointly, for both bargaining units. On July 14, 1989 it applied for conciliation in respect of both bargaining units, and the Minister of Labour responded by appointing one conciliation officer to deal with both units. Conciliation was unsuccessful, and by letter dated August 28, 1989 the Minister of Labour advised the parties that he did not consider it appropriate to appoint a Board of conciliation for either unit (“the no Board report”). Subsequently, the union conducted a strike vote in both units and by letter dated September 12, 1989 advised the company of the results. The union warned that there would be strike action as of “12:00 noon on October 18, 1989”.

11. There followed a telephone conversation between Mr. Murphy, a union representative, and Mr. Lyons, an official of the company. Murphy confirmed that strike action would indeed



commence on October 18th, and that it would involve *both* the office and plant bargaining units. This telephone conversation was apparently in response to the company's letter of September 14, 1989 asserting that office employees were obliged to comply with the stipulated terms of their collective agreement. Accordingly, by at least September 15th, the company was aware that, regardless of the terms of the office workers' collective agreement, they were scheduled to go out on strike on October 18th. The company's view was repeated in a memo to office employees, dated October 17, 1989, in which the company reiterates that, in its opinion, the union and its members are not entitled to repudiate the terms of the article set out above. It knew that the union did not accept this position.

### III

12. Before turning to my conclusions in this matter it may be useful to briefly sketch in the statutory framework within which the parties' rights must be determined. As I observed at the hearing, this case is not particularly novel. It is not at all unusual for parties to "freely negotiate" (i.e. bowing to superior logic or bargaining power) collective agreement language which is inconsistent with the terms of the governing statute. To cite but a few examples: language which purports to allow employees, as a gesture of union solidarity, to refuse to cross a picket line (see *King Paving*, [1976] OLRB Rep. June 291, *Associated Freezers of Canada Limited*, [1972] OLRB Rep. May 445); language which purports to authorize a work stoppage in the event of a jurisdictional dispute (see *Pigott Construction Company Limited*, [1970] OLRB Rep. Mar. 1459); language which purports to allow employees, in concert, to refuse to perform "struck work" to support a sister trade union; (see *Empress Graphics Ltd.*, [1989] OLRB Rep. June 587) provisions purporting to permit "contract re-opener" on one or more issues with resort to a strike prior to the nominal expiry of the collective agreement (see *Kroehler Mfg. Co.*, [1976] OLRB Rep. Sept. 525; and so on. In each of these cases, language favourable to trade union or employee interests was held to be inconsistent with the terms of the *Labour Relations Act*. The context of the instant case is somewhat novel, but the problem is not.

### IV

13. It is trite to say that, at common law, a "collective agreement" had no legal recognition. It was not a "contract", nor was the trade union a "person" or other entity recognized by law. Indeed, it is not a "contract" today, and cannot be the subject of an action in the Courts. A collective agreement, therefore, has such characteristics, requirements, or limitations, as the statute provides. Those provisions of the statute to which particular reference will be made are as follows:

1.-(1) In this Act,

- (e) "collective agreement" means an agreement in writing between an employer or an employers' organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers' organization, on the other hand containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers' organization, the trade union or the employees, and includes a provincial agreement;

52.-(1) If a collective agreement does not provide for its term of operations or provides for its operation for an unspecified term or for a term of less than one year, it shall be deemed to provide for its operation for a term of one year from the date that it commenced to operate.

(2) Notwithstanding subsection (1), the parties may, *in a collective agreement or otherwise* and before or after the collective agreement has ceased to operate, agree to continue the operation

of the collective agreement or any of its provisions for a period of less than one year while they are bargaining for its renewal with or without modifications or for a new agreement, but such continued operation does not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit *and the continuation of the collective agreement may be terminated by either party upon thirty days notice to the other party.*

(3) A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions of this Act without the consent of the Board on the joint application of the parties.

(4) Notwithstanding anything in this section, where an employer joins an employers' organization that is a party to a collective agreement with a trade union or council of trade unions and he agrees with the trade union or council of trade unions to be bound by the collective agreement between the trade union or council of trade unions and the employers' organization, the agreement ceases to be binding upon the employer and the trade union or council of trade unions at the same time as the agreement between the employers' organization and the trade union or council of trade unions ceases to be binding.

(5) Nothing in this section prevents the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation.

[emphasis added]

I will not burden these reasons with the reproduction of sections 5, or 57 of the Act, although they too, will be referred to briefly below.

14. A collective agreement must be in writing. It must clearly set out the terms to which the parties have agreed (section 1(1)(e)). But those terms are not entirely within the parties' control. There must be a recognition clause (section 41 of the Act) and a "no strike clause" (section 42 of the Act), and if a trade union demands a dues deduction clause, it too must be included. There must also be an arbitration clause complimenting the no strike obligation (section 44).

15. Pursuant to section 52 of the Act the collective agreement *must* have a minimum term of operation of at least one year, and if it does not, the statute "deems" that it will be in force for one year. Pursuant to section 52(3) the collective agreement cannot be terminated *even by the parties that negotiated it*, before its stipulated term of operation, without the consent the Labour Relations Board on their joint application. In other words, the very parties who negotiated the collective agreement in a framework of "free collective bargaining", cannot terminate it early.

16. Section 52(1) requires a minimum term of one year to provide a degree of stability to the collective bargaining relationship. It requires a "specific" term so that any employee wishing to change bargaining agents or terminate bargaining rights will be able, by merely looking at his collective agreement, to determine when this can be done. The requirement for a specific term is necessary to give practical affect to the employees' right to change or reject their bargaining agent. Similarly, the collective agreement cannot be terminated early without the consent of the Board, because this might foreclose the "open period" when representation questions can be raised. That is why the Board will not grant its consent for early termination of a collective agreement until it is satisfied that no employees are seeking to exercise that option.

17. The rather stringent requirement for a specific term of not less than one year is tempered by section 52(2) of the Act. The Legislature has recognized that, in many cases, it may be useful for the bargaining parties to extend the terms of their collective agreement while they are bargaining for a new one. Such extension may be effected "in a collective agreement or otherwise

and before or after the collective agreement has ceased to operate". The collective agreement itself can provide for its own extension while bargaining is ongoing, but there are three qualifications:

1. such extension cannot last for more than one year;
2. such extension cannot be a bar to a certification application by another trade union or an application for the termination of bargaining rights; and
3. such extension may be terminated upon 30 days notice by either the trade union or the employer.

18. The Legislature has recognized the utility of these extension arrangements, but has limited their maximum term of operation and has provided a kind of "escape clause" permitting either party to bring the extension arrangement to an end upon 30 days notice to the other; moreover, it is not without significance that the underlined portions of section 52(2) were added shortly after the release of the Divisional Court's opinion in *Hotel and Restaurant Employees and Bartenders International Union, Local 197 v. Wentworth Arms Hotel Limited et al*, 75 CLLC ¶14268 which canvassed a number of alternative interpretations of then section 44, the predecessor of section 52. It is also interesting to note that when this case eventually made its way to the Supreme Court of Canada the majority opinion expresses concern about the possibility of a perpetual extension, eliminating the right to strike forever, and the concurring judgement expresses concern about the ability of the parties, *in their initial collective agreement*, to provide for an indefinite extension. Both concerns were eliminated by the statutory amendment. The parties can provide in their agreement for its own extension, but such extension is limited to one year and terminable on 30 days notice.

## V

What does article 25 mean? It seems to me that the language is clear and unambiguous. The parties have agreed that the collective agreement for the office workers will terminate either on September 30, 1989 or 30 days after the effective date of the new agreement with the plant workers whichever is later. The parties have devised the formula which ensures that the office workers will never be in a strike position at the same time as the plant employees and that, probably, the office agreement will only be finalized after the agreement with the plant. This reading is consistent with both the language of article 25, the parties' bargaining history, and the employer's current stance. However, it does not necessarily follow that the objective which the employer has sought to achieve is possible within the statutory framework to which all collective agreements must adhere.

19. Counsel for the union argues that when section 52(2) and article 25 are considered in light of the Supreme Court of Canada decision in the *Wentworth Arms* case ([1979] CLLC ¶14189), I must conclude that article 25(b) is illegal and void, leaving only 25(a) governing the termination of the collective agreement. If that is so, the strike is legal because, by October 18, the office group had satisfied the statutory requirements: they had gone through conciliation, received a "no Board report", and there was no collective agreement in existence. In the alternative, the union contends that the company received adequate notice to terminate the agreement in accordance with section 52(2) of the Act.

20. I have read with interest the various *Wentworth Arms* decisions in the Divisional Court, Court of Appeal, and Supreme Court of Canada, and have noted the conflicting views expressed by judges at all levels as to the meaning of the collective agreement there under review, and its relationship to the then existing provisions of the *Labour Relations Act*. However, since the Legislature immediately amended the statute to address the concerns ultimately enunciated in the Supreme Court of Canada, I am not at all convinced that its decision is very helpful. It seems to me



that this case can be resolved on much narrower grounds based upon an interpretation of section 52(2) as it now is.

21. The employer in this case has sought, for tactical reasons, to separate the bargaining of its office and plant employees. It insists that because they are separate bargaining units, there must be a separate bargaining process leading to separate collective agreements. To buttress that position, it was able, through the exercise of its bargaining power, to achieve a clause in the office agreement which, on its face, makes it more difficult to engage in any form of joint or coalition bargaining, and rules out the possibility of joint strike action.

22. But the formula that the employer embraced must be consistent with the *Labour Relations Act* and it clearly involves (as counsel for the employer concedes) reference to section 52(2) of the Act. The application of article 25(b) entails not only the possibility, but also the real likelihood - verified by the situation here - of a collective agreement with an indefinite term. That, in my view, triggers not just section 52(2) upon which the employer relies, but also the "escape clause" which the Legislature provided by its amendment in response to the Divisional Court decision in *Wentworth Arms Hotel*. The "escape clause" in the statute provides that *even if* the bargaining parties have entered into an extension arrangement for an indefinite term, that arrangement may be terminated by either of them on 30 days notice. The term "notice" is undefined.

23. Section 14 of the Act refers to *written* notice to bargain. Likewise, section 53(1) contemplates "*notice in writing*" of a desire to bargain with a view to renewal of a collective agreement. Section 52(2) speaks merely to "notice". I conclude, therefore, that all that it is required is 30 days actual notice that a bargaining party no longer wishes to be bound by a previously agreed to extension arrangement. That right is a reciprocal. The union and employer both have the right to repudiate their temporary truce and return to a regime of free collective bargaining where either of them can resort to economic sanctions if the statutory conciliation process has been completed.

24. In my view, that is what has happened here.

## VI

25. In the instant case, the union, despite the company's opposition, took the position that there should be joint bargaining and a fusion of bargaining units. Bargaining demands were submitted together. The union sought conciliation at the same time and a common conciliation officer was appointed. A "no Board" report was issued on the same day for both bargaining units. The union notified the employer that a strike vote would be taken, at approximately the same time, in both bargaining units. It was. The employer was also notified, specifically, by September 15, that both units would go on strike on October 18.

26. It is clear from the events and the company's correspondence, that while the company was insisting upon the application of article 25(b) to the office group, the union was repudiating any extension of the office workers' collective agreement or any purported bar to the employees' right to strike. The telephone conversation from a union official verifying this position, was made in response to a letter from the company restating its position that the extension agreement prohibited strike action. There can be no doubt, therefore, that the company had more than 30 days notice that the union was rejecting, repudiating, or terminating the extension arrangement contemplated by article 25(b).

27. Counsel for the employer argues that there must be an express written submission from the union, unequivocally indicating, pursuant to section 52(2), that it is terminating the extension arrangement to which it had previously agreed. However, I do not think the statute requires such

formality - however desirable it might be. In my view, it is sufficient if, upon 30 days notice, the union conveys a clear and unequivocal intention to terminate the effect of any extension agreement which may be outstanding. That is certainly what happened here.

28. For the foregoing reasons, I conclude that the company had notice of the union's intention to terminate the extension provided in article 25(b) and that the extension or "bridge" agreement was terminated, by October 18, 1989. Having completed the statutory conciliation process and received a "no Board" report, the office employees were entitled to engage in a lawful strike.

29. This application is therefore dismissed.

---

**3153-88-G The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local Union No. 172 Restoration Steeplejacks, Applicant v. Eastern Construction Company Limited, Respondent**

**Collective Agreement - Construction Industry - Construction Industry Grievance - Union local claiming voluntary recognition from Working Agreement signed by Council ten years prior to local's existence - Council unable to be agent of non-existent principal - Agreement not binding employer and union local - Grievance referral dismissed**

**BEFORE:** *R. A. Furness*, Vice-Chair, and Board Members *W. Gibson* and *C. A. Ballentine*.

**APPEARANCES:** *L. C. Arnold* and *Tony Wice* for the applicant, *Joe Liberman* and *Mark Contini* for the respondent.

**DECISION OF R. A. FURNESS, VICE-CHAIR AND BOARD MEMBER W. GIBSON;** November 30, 1989

1. The names of the applicant and respondent are amended to read: "The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local Union No. 172 Restoration Steeplejacks" and "Eastern Construction Company Limited".

2. The applicant has referred a grievance concerning the interpretation, application, administration or alleged violation of a collective agreement to the Board for final and binding determination.

3. The Board initially dealt with a preliminary issue which was raised by the respondent, namely, whether the applicant has bargaining rights with respect to the respondent.

4. The parties agreed that three documents be filed in evidence and also submitted an agreed statement of facts. The first document consisted of an executed agreement entitled "Working Agreement" dated August 13, 1956 between Eastern Construction Company Ltd. and The Building and Construction Trades Council of Toronto and Vicinity (the "Working Agreement"). The second document consisted of a collective agreement effective from May 1, 1988 to April 30, 1990, between The Operative Plasterers' and Cement Masons' International Association of the United States and Canada and the O.P. & C.M.I.A., Local Union No. 172 Restoration Steeplejacks and The Steeplejack and Masonry Restoration Contractors Association. The third document

consisted of the designations for the employee and employer bargaining agency dated April 27, 1978, with respect to "all masonry restoration employees."

5. The agreed statement of facts are as follows:

- I The respondent and The Building and Construction Trades Council of Toronto and Vicinity (presently the Toronto and Central Ontario Building Trades Council) entered into a Working Agreement dated August 13, 1956. There has not been any amendment, termination, notice of termination or prepared revision by either party.
- II Local 172 was chartered on July 16, 1966 and has remained in existence ever since.
- III Local 172 was first affiliated with The Building and Construction Trades Council of Toronto and Vicinity in March of 1971 and subsequently Local 172 disaffiliated for a period and then reaffiliated. The latest affiliation dates from January of 1979. Local 172 has been an affiliate since January of 1979.
- IV Local 172 is a designated employee bargaining agency and has entered into a provincial collective agreement covering masonry restoration.

6. The Working Agreement reads as follows:

**WORKING AGREEMENT**

Agreement dated the 13th day of AUGUST A.D. 1956.

**Between:** EASTERN CONSTRUCTION COMPANY LTD.,  
Walkerville, Ontario,  
hereinafter referred to as "The Company"

- and -

**THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF TORONTO AND VICINITY**

hereinafter referred to as "The Council"

The parties hereto hereby expressly covenant and agree as follows:

**PURPOSE**

1. The general purpose of this agreement is to establish mutually satisfactory relations between the Company and its employees; to eliminate unfair practices; to establish and maintain satisfactory working conditions, hours of work and wages and to stabilize and encourage the construction industry.

**RECOGNITION**

2. The Company recognizes the Council and its affiliated unions as the collective bargaining agency for all its employees.
3. The Company agrees that it will employ only members of the unions affiliated with the Council and will let contracts or sub-contracts only to individuals or companies whose employees are members in good standing in the unions affiliated with the Council and will do all things necessary to insure that only members of the unions affiliated with the Council are employed in construction work in which the Company is engaged.
4. The Council through its affiliated unions will supply competent workmen to do the work of any trade or calling that may be required by the Company in the trades represented by the Council.



**WAGES, HOURS AND WORKING CONDITIONS**

5. The company agrees to recognize and be bound by the agreements existing between each of the unions affiliated with the Council and the Toronto Builders' Exchange and specifically agrees that the provisions relating to wages, hours and working conditions set forth in the said agreements shall be binding on the Company. In the event any of the said conditions of any of the said agreements are altered or amended at any time during the currency of this agreement, the Company shall be bound by such alterations and amendments. The said agreements are available for inspection by the Company at the office of the Council at 167 Church Street, Toronto; at the Toronto Builders' Exchange, 1104 Bay Street, Toronto; and at the Department of Labour, Parliament Buildings, Toronto. The Council shall notify the Company of any amendments or alterations of the said agreements.

**TERMINATION**

6. This agreement shall remain in force for a period of one year from the date hereof and shall continue in force from year to year thereafter unless in any year not less than sixty days before the date of its termination, either party shall furnish the other with notice of termination of, or proposed revision of, this agreement; **PROVIDED**, however, that this agreement shall remain in full force and effect until completion of all jobs that have been commenced during the operation of this agreement.

**In Witness Whereof** the parties hereto have caused this agreement to be executed by their duly authorized representatives.

Signed on behalf  
of the Company

"Illegible Signature"

Signed on behalf  
of the Council

"M. H. Nicols"

"Albert Hull"

7. The preliminary issue before the Board is whether Local 172 which was chartered in 1966 could be afforded voluntary recognition by the respondent pursuant to the Working Agreement which was signed in 1956 at a time before Local 172 came into existence. It is the position of Local 172 that the respondent is a party to a Working Agreement dated August 13, 1956, and by being a party to a collective agreement the respondent recognizes Local 172 as the bargaining agent for its employees. It is the position of Local 172 that the respondent and Local 172 are bound to the provincial collective agreement between the Operative Plasterers' and Cement Masons' International Association of the United States and Canada and the Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local Union 172, Restoration Steeplejacks and The Steeplejack and Masonry Restoration Contractors Association. If Local 172 has bargaining rights as claimed by Local 172, the Board will then determine the issue of whether the respondent has violated the provincial collective agreement.

8. It was the position of the respondent that it was necessary for Local 172 to establish not only an agency relationship between itself and the Building and Construction Trades Council of Toronto and Vicinity (presently The Toronto and Central Ontario Building Trades Council) (the "Council") but also that Local 172 in fact authorized the Building and Construction Trades Council of Toronto and Vicinity to enter into the Working Agreement on its behalf. It was also the position of the respondent that the fact of affiliation continuous or otherwise is neither authority nor establishes the authority of the Council to enter into a Working Agreement like the one referred to in paragraph six.

9. The Board has previously considered the nature of a Working Agreement and the rela-

tionship of the Council to employees and affiliates of the Council. In *The Board of Education for the City of Toronto*, [1982] OLRB Rep. March 496, the Board held that the Council is a council of trade unions as envisaged under section 1(1)(g) of the *Labour Relations Act* and not a certified council of trade unions within the meaning of section 1(1)(d). In *M.J. Guthrie Construction Limited*, [1984] OLRB Rep. Jan. 50, the Board determined that the Working Agreement is a recognition agreement signed by the Council on behalf of its affiliates. In making this determination, the Board recognized the relationship between the Council and its various affiliates as that of principal and agent. More recently in *Harbridge & Cross Limited*, [1988] OLRB Rep. Apr. 391 (application for judicial review dismissed by Divisional Court on July 12, 1989 - see case #857/88), the Board construed the Working Agreement before it and concluded that the Working Agreement did not limit recognition by the employer to a limited number of affiliates of the Council rather than all affiliates of the Council.

10. It has been the position of the Board that the Council acts as the agent for trade unions who are its affiliates. The Working Agreement is a voluntary recognition agreement entered into by the Council as agent for its affiliates. On the facts before this panel, may it be said that Local 172 has bargaining rights based on the Working Agreement? The answer to this question is to be found by applying the principles of the law of agency.

11. In order for Local 172 to succeed in its assertion that it has bargaining rights, Local 172 must establish that the Council was in fact its agent at the time the Working Agreement was entered into, namely August 13, 1956. Local 172 must establish that there was a valid agency relationship at that time. The existence of an agency relationship is a legal relationship and the prerequisites must be established before the agency relationship may be said to exist. In relying on the earlier decisions of the Board, Local 172 is asserting that an agency relationship was in existence and that the agent had been given the necessary authority to enter into the Working Agreement. It is Local 172 which seeks to establish the existence of bargaining rights and in order to do this it must be established that an agency relationship existed. The onus of proving agency rests upon the person alleging that an agency existed. See *Tanouye v. KJM Developments Ltd.* (1980) 24 A.R. 200 at page 208.

12. Local 172 came into existence on July 16, 1966. In these circumstances it is necessary for Local 172 to prove that a valid agency relationship was established. As was stated earlier, Local 172 came into existence some ten years after the signing of the Working Agreement. The issue is whether under the law of agency the facts of this referral give rise to the creation of an agency relationship between Local 172 and the Council.

13. Agency is the relationship between one party, the principal, and another party, the agent, whereby the latter is empowered to act on behalf of and represent the former. See *Roeder v. Halicki* [1983] 4 W.W.R. 220 at 228. The relationship arises from the express consent of principal and agent, see *Royal Securities Corporation Ltd. v. Montreal Trust Company et al.* [1967] 1 O.R. 137, affirmed [1967] 2 O.R. 200 (C.A.), or by implication or operation of principles of law, see generally *The Canadian Encyclopedic Digest* (3rd) Title 4 73-54. The purpose and effect of the relationship are to transfer to the agent the authority of the principal to act, thereby enabling the agent to affect the principal's legal relations with third parties, see *Royal Securities Corporation Ltd. v. Montreal Trust Company et al.*, *supra*.

14. Agency is created as a general rule on a contractual or consensual basis. Some authorities go as far as to suggest there has to be an element of agreement or consent before an agency relationship can be found to exist. At the very least there are only limited exceptions to that rule. These exceptions are agency by estoppel, agency by necessity and agency by ratification. These

exceptions might be better regarded less as exceptions because there is no real consent involved in these three situations. In each instance there has to be a principal in existence at the time the agent purports to act. Consent or agreement is the primary basis on which agency is created. In order for there to be a consent or agreement by a principal that another party act as its agent, whether such consent or agreement be express or implied, the principal has to exist. See generally *Bowstead on Agency* (14th Edition) pages 1 to 6 and *Lunenbuerg County Press Limited v. Demone* (1978), 26 N.S.R. (2d) 179. Clearly, a non-existent principal is unable to consent or agree to another party acting as its agent. There are three situations which may be regarded as exceptions to the requirement of consent or agreement. However, even in these three so-called exceptions, there is a requirement that a principal be in existence. These three so-called exceptions are: agency by estoppel, agency of necessity and agency from cohabitation. The latter is clearly not applicable and will not be considered further by the Board.

15. In agency by estoppel there must be a holding out in order for this to be established. Agency by estoppel is a very limited right and arises where one person has so acted as to lead another to believe that he has authorized a third person to act on his behalf, and that the other in such belief enters into transactions with the third person within the scope of such ostensible authority. In this case the first-mentioned person is estopped from denying the fact of the third person's agency under the general law of estoppel. See, for example *Howard v. Carline et al.* (1956), 7 D.L.R. (2d) 324, and, see generally, 1 *Halsbury's Laws of England* 3rd ed., page 158, ¶374. Agency of necessity arises when an agent with limited express powers has to take prompt action in excess of his instructions. In order for an agency of necessity to arise, the agent must show that he could not communicate with his principal, that the course he took was the only reasonable and prudent one to take in the circumstances and that he acted in a *bona fide* manner in the interests of the parties concerned. In these circumstances the agent out of necessity may act for his principal without authority. See, for example, *Great Northern Railway Co. v. Swaffield* (1874) L.R. 9 Ex. 132.

16. On the facts of this referral, may it be said that, even though the Council may have acted without authority in entering into the Working Agreement on behalf of Local 172, the principal Local 172 has ratified what the Council has done on its behalf some ten years later? In *Kelner v. Baxter et al* (1866) L.R. 2 C.P. 174, a contract was signed by a person who stated that he was signing "as agent". However, at the time of the signing the person had no principal in existence. The principal came into existence some three weeks after the contract had been signed and the court held that principal, a company, could not become liable on the contract by ratification. At page 184, Willes, J. stated:

Could the company become liable by a mere ratification? Clearly not. Ratification can only be by a person ascertained at the time of the act done, by a person in existence either actually or in contemplation of law; as in the case of assignees of bankrupts and administrators, whose title, for the protection of the estate, vests by relation.

The principles enunciated in *Kelner v. Baxter* have been followed in the Ontario decisions of *Gardiner v. Martin and Blue Water Conference Inc.* [1953] O.W.N. 881 and *Okinczyc v. Tessier* (1979), 8 R.P.R. 249. In Ontario, in order to take it out of the common law rule, it has been necessary for a statutory enactment so that a corporation may adopt a pre-incorporation contract entered into in its name or on its behalf. In such circumstances the corporation is entitled to the benefits and is subject to the liabilities that were contracted in its name or on its behalf. See *Business Corporations Act* R.S.O. 1980 c. 54 s. 19. There remains to be considered whether it may be said that there was a valid ratification by Local 172 of the conduct of the Council in signing the



Working Agreement. In Fridman, *The Law of Agency*, 2nd Ed. page 43, the author states the three conditions as prerequisites for valid ratification:

First, the agent whose act is sought to be ratified must have purported to act for the principal. Secondly, at the time the act was done the agent must have had a competent principal. Thirdly, at the time of ratification the principal must be legally capable of doing the act in question himself ..... The principal must be in existence at the time the act was done by the agent. No one can purport to act as an agent for a person who will come into existence at some future date, even if the agent can reasonably expect that his acts will be adopted. Ratification can only be .... by a person in existence either actually or in contemplation of law. This means that the principal must be a live human being, or a juristic person.

See also *Edwards Real Estate Ltd. v. Bramtar Holdings Ltd.* (1978), 7 Alta. L.R. (2d) 52, *Keighley, Maxsted & Co. v. Durant (carrying on business as Bryan Durant & Co.)* [1901] A.C. 240, per Lord James at page 251, and *Royal Inns Canada Ltd. (Trustee of Estate of) v. Bolus-Revelas-Bolus Ltd. et al.* (1982), 37 O.R. (2d) 339 (Ont. C.A.) (Leave to appeal to Supreme Court of Canada refused - (1982), 38 O.R. (2d) 703.)

17. The respondent argued that even if it could be said that a valid agency relationship existed between the Council and the applicant, there was no basis upon which the Board could be satisfied that Local 172 authorized its agent to enter into a Working Agreement. It was the position of the respondent that there was no evidence as to whether membership in the Council, be it intermittent or continuous, of itself constituted authority to enter into a Working Agreement and that being an agent does not carry with it any and all authority. In view of the analysis of the principles of the relationship between an agent and a principal and the result reached by the Board, it is not necessary for the Board address the issue of the authority of the agency relationship.

18. Local 172 agreed that the Board was subject to and not above the law of agency and doubted the applicability of the commercial law of agency to the facts of this referral. It was the position of Local 172 that the Working Agreement remained in force for a period of one year and continues from year to year and that a new Working Agreement is entered into each year. In the view of Local 172 the last Working Agreement had been entered on August 12, 1988 prior to the filing of this referral. It was pointed out that at that time Local 172 was unquestionably an affiliate of the Council. Local 172 also argued that section 51(4) of the *Labour Relations Act* specifically provided for a collective agreement to be binding on each affiliate at the time the collective agreement was entered into. It was the position of Local 172 that as long as it was an affiliate of the Council when the Working Agreement was in existence then the Council had ostensible authority in the context of labour relations to enter into the Working Agreement with respect to voluntary recognition and it did so.

19. In our view it is a fiction to argue that there is a new Working Agreement each year. There has clearly been no new agreement in writing each year. The Working Agreement speaks as of August 13, 1956, the date it was entered into. The Working Agreement "continues in force" and there is nothing in the document whereby it would cover affiliates to be formed sometime in the future. Local 172 did not exist at the time the Working Agreement was entered into and did not affiliate with the Council initially until some five years after it came into existence. The foregoing review of the law of agency was not contradicted by Local 172 other than for some remarks about the applicability of the commercial law of agency. While it is true that the foundations of the law of agency lie in commerce, the principles of the law of agency are present in the *Labour Rela-*

tions Act, see for example, sections 39 and 99(2) (ratification vote for acceptance or rejection of an offer by an employer and the scope of an agent's authority). In addition, the principles of the laws of agency are present in the jurisprudence of the Board such as the authority of a representative to sign or the ratification of a collective agreement, ratification by estoppel and ostensible authority. See, for example, *Inspiration Ltd.*, [1967] OLRB Rep. Sept. 561; *G.A. Baert Construction (1964) Ltd.*, [1971] OLRB Rep. Dec. 766; *G. M. Gest Ltd.*, [1978] OLRB Rep. Aug. 747; *Maple Leaf Taxi Co. Ltd.*, [1982] OLRB Rep. Nov. 1671; *Sentinel Reliance Products Ltd.*, [1973] OLRB Rep. Jan. 7; and *Paul D'Aoust Construction Ltd.*, [1976] OLRB Rep. Sept. 529.

20. The argument raised by Local 172 with respect to section 51(4) has no application to the facts of this referral because at the time the Working Agreement was entered into Local 172 was not in existence and was not an affiliate of the Council.

21. The Board has reviewed the law of agency with respect to the requirement that the principal be in existence when an agent arguably purports to act for such a principal, with respect to any so-called exceptions to the law in that area and the essentials of ratification. It appears that the arguments advanced by the respondent in this referral were not advanced during the cases referred to earlier in paragraph nine. For the reasons set forth in this decision the Board is not prepared to find that Local 172 became bound by the terms of the Working Agreement either at the time it became bound or subsequently during its period of affiliation/non-affiliation with the Council.

22. Accordingly, we find that Local 172 and the respondent are not bound by the collective agreement referred to in paragraph four. This referral is dismissed.

#### **DECISION OF BOARD MEMBER C. A. BALLENTINE; November 30, 1989**

1. I dissent from the decision taken by the majority of the Board. It has been alleged by Local 172 in a grievance arbitration referral under Section 124 of the Act that Eastern Construction Company Ltd. has let construction restoration work on the Park Plaza Hotel at 4 Avenue Road in the City of Toronto to a non-union subcontractor. This would amount to a violation of the Toronto-Central Ontario Buildings and Construction Trades Council "Working Agreement". I disagree with the majority's application of the law of agency and feel it would be inequitable to permit the employer to escape the terms of the "closed shop" agreement in this case.

2. The essence of the "Working Agreement" is that it requires an employer bound by its terms to sub-contract only to contractors which employ exclusively union workers.

*The Company agrees that it will employ only members of the unions affiliated with the Council and will let contracts or sub-contracts only to individuals or companies whose employers are members in good standing in the unions affiliated with the Council and will do all things necessary to ensure that only members of the unions affiliated with the Council are employed in construction work in which the Company is engaged.*

[emphasis added]

3. The Council is chartered by the Building and Construction Trades Department of the AFL-CIO and under the Department's constitution all affiliated Building Trades International Unions affiliated with the Department are obligated to ensure that all their local unions are affiliated to local and provincial councils. In 1956, when Eastern signed the "Working Agreement", the existing local unions of the Operative Plasterers' and Cement Masons' International Association of the United States and Canada were affiliates of the Council and authorized the Council, as their agent, to enter into the "Working Agreement" with Eastern. Subsequently when Local 172, a local union of the Operative Plasterers' and Cement Masons' International Association of the United

States and Canada became an affiliate of the Council it authorized the Council to act as its agent. I agree with the submissions of counsel for the applicant that the "renewing" clause of the agreement serves to grant the Council the authority to act as agent for Local 172 in respect to that agreement.

4. I disagree with the majority's view that it is a fiction to argue that there is a new "Working Agreement" each year. If the agreement cannot be said to renew itself each year, why was the following clause included in the agreement?

*This agreement shall remain in force for a period of one year from the date hereof and shall continue in force from year to year thereafter unless in any year not less than sixty days before the date of its termination, either party shall furnish the other with notice of termination of a proposed revision, of this agreement...*

[emphasis added]

5. If the agreement was not to renew each year, why did the authors not simply construct an instrument which remained in force until a party to it gave notice of its intent to terminate or propose revisions? One reason may quite possibly have been that the authors of the agreement foresaw that new locals may come into existence from time to time and they wanted to insure that new affiliates would be covered by the agreement, notwithstanding that it was signed previous to the birth of a local. The last "renewal" of the agreement took place on August 12, 1988. At this time, Local 172 was an affiliate of the Council, and following the reasoning set out in *M. J. Guthrie Construction Limited*, [1984] OLRB Rep. Jan. 50, the council would have the necessary authority to act as agent for Local 172. The fact that neither of the parties to the "Working Agreement" have exercised their rights under the agreement and given notice to terminate or propose revisions is irrelevant. The majority of this panel seems to suggest that, had revisions taken place, a new agreement would have resulted. The yearly renewal, however, is not dependent upon changes taking place in the agreement.

6. It is my position that Eastern Construction Limited is bound by the closed shop "Working Agreement" and, pursuant to this, is bound to all affiliated local union agreements of the Council from the time it signed the "Working Agreement" and remains bound until that agreement is terminated or revised in accordance with its terms and the *Labour Relations Act*.

---

**0250-87-R** United Brotherhood of Carpenters and Joiners of America, Local 27, Applicant v. **Mollenhauer Limited**, Respondent v. Labourers' International Union of North America, Local 183, Intervener #1 v. Metropolitan Toronto Apartment Builders Association, Intervener #2

Certification - Practice and Procedure - Pre-Hearing Vote - Representation Vote - Sole voter requesting Board not count ballot - Board already ordering counting of ballot in previous decision - Eligible voters aware of possibility of single vote beforehand in every case - Not open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation against person participating in proceeding - Board to respond quickly to allegations of retaliation

**BEFORE:** *G. T. Surdykowski*, Vice-Chair, and Board Members *D. A. MacDonald* and *P. V. Grasso*.



**DECISION OF THE BOARD;** November 24, 1989

1. Pursuant to the Board's decisions dated October 23 and November 14, 1989 herein, the ballot cast in the pre-hearing representation vote held in this application was scheduled to be counted on November 15, 1989. By letter dated November 14, 1989, the employee, who by now everyone knows was the sole person entitled to cast a ballot who cast one, wrote to the Board as follows:

Ontario Labour Rel. Board

Ref # 0250-89-R.

Gentlemen,

It has come to my knowledge that the ballot that I voted on in the summer of 1987 is to be opened up at 10 A M on 15th of November.

I feel very strongly against the ballot being opened, because at the time of the ballot I was not aware that my vote would be the only eligible ballot.

I respectfully request that my wishes be considered in this matter as it may jeopardize my position in the union or the company.

Respectfully Yours.

Brian Ogden.

The respondent supports the employee's position. The applicant submits that the Board has already twice considered whether the ballot should be counted, that there has been no new reason offered for not counting the ballot, and that the *Labour Relations Act* offers ample protection against retaliatory action for persons who participate in proceedings before the Board.

2. It is true, as the respondent suggest, that the primary position of all interested parties has been that the ballot cast in the representation vote herein should not be counted. (In that respect we view the applicant's most recent correspondence as accepting the Board's previous two decisions with respect to this issue rather than as resiling from its initial position.) However, the interested parties cannot agree on what results should follow from that. The respondent has submitted that the application should be dismissed. This would of course result in the respondent being successful in fending off the application. There is no basis in either the Act or otherwise for proceeding in this manner. The applicant has suggested that a new representation vote be taken at a time when there are more employees in the bargaining unit. Since the hearings have been concluded, any such vote could not be a pre-hearing representation vote, which was what was requested in this application. Further, although the Board has on occasion deferred the taking of a representation vote there is no precedent for taking *another* representation vote in circumstances like the ones in this application. Further, the Board's experience with deferring representation votes in the construction industry has been unsatisfactory. The employee concerned has offered no suggestion as to how to proceed as an alternative to counting his ballot.

3. We have considered the representations of the employee as aforesaid. We are not persuaded that there is any reason to depart from our reasoning in the previous two decisions issued in this proceeding with respect to this issue. We also find it unnecessary to repeat those reasons herein. We wish to add however, that while no one could have *known* that only one ballot would ultimately be eligible to be counted, everyone knew or ought to have known that this was a possi-

bility. Further, it is not open to any voter to “change his/her mind” or to withdraw a ballot cast in a proceeding. In that sense (at least), once cast, the ballot no longer belongs to the voter.

4. We are not insensitive to the concerns of employees who find themselves in a situation like this one. The Board does its best to maintain the secrecy of employee wishes. However, it is well known that that is not always possible. While the unfortunate result of counting the single ballot is that the wishes of the employee who cast it will be revealed, that, by itself, is no reason to not count it. Nor are we persuaded that there is any other cogent reason to not count the ballot cast in this application in the circumstances.

5. Finally, we observe that section 80 of the *Labour Relations Act* provides that:

80.-(1) No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,

- (a) refuse to employ or continue to employ a person;
- (b) threaten dismissal or otherwise threaten a person;
- (c) discriminate against a person in regard to employment or a term or condition of employment; or
- (d) intimidate or coerce or impose pecuniary or other penalty on a person,

because of a belief that he may testify in a proceeding under this Act or because he has made or is about to make a disclosure that may be required of him in a proceeding under this Act or because he has made an application or filed a complaint under this Act or because he has participated or is about to participate in a proceeding under this Act.

(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,

- (a) discriminate against a person in regard to employment or a term or condition of employment; or
- (b) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that he may testify in a proceeding under this Act or because he has made or is about to make a disclosure that may be required of him in a proceeding under this Act or because he has made an application or filed a complaint under this Act or because he has participated or is about to participate in a proceeding under this Act.

Let there be no misunderstanding. The protections of section 80 apply equally to persons who participate in a Board proceeding by casting a ballot in a representation vote as they do to persons who participate in other ways. We assure all concerned that the Board will respond quickly and appropriately to any allegation that the employee who cast the ballot in this case has been the victim of any improper conduct as a result of his participation in the proceeding.

6. The Registrar is directed to proceed forthwith to count the ballot cast in this application.

---

**0532-88-R; 0533-88-U; 1197-88-U** National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, (CAW-Canada), Applicant v. **Ontario Bus Industries Inc.**, Respondent v. Group of Employees, Objectors; National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, (CAW-Canada), Complainant v. Ontario Bus Industries Inc., Respondent

**Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Remedies - Interference in trade union found where employer questioned employees about union support, prohibited and punished union solicitation on company property, shut down plant to permit meetings of union opposition, transferred union supporters from regular jobs, posted foremen at hotel where union meeting taking place - Interference and intimidation found where employer monitored union leafletting at plant gate - Certification inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment files for solicitation, and provision to trade union of updated list of employees names and addresses**

**BEFORE:** *Robert D. Howe*, Vice-Chair, and Board Members *R. W. Pirrie* and *H. Peacock*.

**APPEARANCES:** *Daniel A. Harris* and *Clare Menegheni* for the complainant; *R. C. Fillion*, *Joanne Sajtos*, *Don Sheardown* and *Diane Sander* for the respondent; *Dale Sharp*, *Jeff King* and *Dave Heppollette* for the objectors.

**DECISION OF ROBERT D. HOWE, VICE-CHAIR, AND BOARD MEMBER R. W. PIRRIE;**  
November 30, 1989

1. File No. 0532-88-R is an application by the National Automobile, Aerospace and Agricultural Implement Workers of Canada (referred to in this decision as the "C.A.W." and the "Union") for certification under section 8 of the *Labour Relations Act* as bargaining agent of employees of the respondent, Ontario Bus Industries Inc. (the "Company"). File Nos. 0533-88-U and 1197-88-U are complaints under section 89 of the Act in which the Union alleges that the Company has contravened sections 3, 64, 66, and 70. The Union also relies upon those allegations in support of its application for certification under section 8.

2. The section 89 complaints name a total of seven grievors: Peter Galeota, Momcilo (Mike) Trajkovic, George Chioconi, Oscar Valencia, Stanislaw (Stanley) Pietras, Raimundo Sousa, and Charles Janczyk. However, during the course of his testimony, Mr. Sousa advised the Board that he had obtained alternate employment and did not want to proceed with his complaint. Thus, although the Union relies upon his testimony in support of its application for certification under section 8 of the Act and in support of its request for relief for the other grievors, it no longer seeks any relief for Mr. Sousa.

3. On August 9, 1988, counsel advised the Board that they had agreed to argue a number of preliminary issues and request the Board to issue a decision regarding those issues before proceeding further. We acceded to that request and issued a unanimous decision concerning those issues on September 15, 1988: see *Ontario Bus Industries*, [1988] OLRB Rep. Sept. 914. As indicated in paragraph 3 of that decision, representatives of the parties met with a Board Officer on June 24, 1988 and reached agreement on all aspects of the bargaining unit description, with the



exception of the issue of whether persons regularly employed for not more than twenty-four hours per week should be excluded from the unit. It is the Board's practice to exclude such persons if their exclusion is requested by the applicant or respondent to a certification application, and the employer either employs such persons at the time of the application or has a history of employing such persons. However, in the instant case, although the Company (and the objectors) requested that exclusion, there were no such persons in the employ of the respondent at the time of the application, and the evidence adduced before us does not establish a history of employing such persons. Accordingly, having regard to the aforementioned agreement of the parties and to the Board's determination that an exclusion of part-time employees is not warranted, the Board finds that all employees of the respondent in Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. It is common ground among the parties that there were 331 employees in the bargaining unit at the time the application was made. The Union has filed membership evidence in respect of 67 (20.2%) of those employees. (There are also four "lost" cards, i.e. cards filed in respect of persons whose names are not on the list of employees filed with the Board by the respondent.) The dates on which cards were signed, and the number of cards signed on those dates, are as follows:

April 15	5 cards (plus 1 lost card)
16	7
17	6
18	25 (plus 1 lost card)
19	7 (plus 1 lost card)
20	5
21	1
22	4 (plus 1 lost card)
28	1
May 6	1
14 or 19	1
28	2
June 1	1
7 or 9	1

5. The hearing of the merits of these three files commenced on December 13, 1988 and continued on December 14, 15, 20, 21, and 22, 1988, and May 9, 10, 11, and 30, June 1, 6, 13, and 14, and July 5, 1989. During those fifteen days of hearing, the Board heard oral evidence from twenty witnesses and received thirty-nine exhibits. In making our findings of fact, we have carefully considered all of the oral and documentary evidence, the submissions of the parties, and such factors as the firmness and reliability of the various witnesses' memories, their demeanour while testifying, their ability to resist the influence of self-interest when giving their version of events, and the consistency of their evidence. We have also considered what is most probable in the circumstances of the case, and considered the inferences that may reasonably be drawn from the totality of the evidence.

6. On December 14, 1988, the Board made the following unanimous oral ruling, after hearing and recessing to consider the submissions of counsel:

Counsel for the Union proposes to call as his second witness Mike Trajkovic, who is one of the grievors in File No. 0533-88-U. Counsel has also advised the Board that Mr. Trajkovic's ability to speak and understand English is limited, and that he wishes to testify through an interpreter so that he can give his testimony in Serbian. The respondent and the objectors oppose the use of

an interpreter. It is their position that Mr. Trajkovic is sufficiently fluent in the English language to testify without the assistance of an interpreter. A trial judge or tribunal has traditionally had a discretion to permit a witness to testify through an interpreter where a witness does not possess sufficient knowledge of English to understand and answer the questions put to him. Indeed, it has been recognized that providing an interpreter in such circumstances is one of the requirements of a fair trial or hearing. Section 14 of the *Canadian Charter of Rights and Freedoms* now enshrines that principle as a right. It provides as follows:

A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter. However, as indicated by the Ontario Court of Appeal in *Roy v. Hackett* (1987), 45 D.L.R. (4th) 415, although section 14 must be given a broad and generous interpretation, the right to an interpreter is not an absolute right. Where a witness requests the assistance of an interpreter, an opposing party has the right to challenge the basis for the request by means of cross-examination of the witness (see page 426 of the judgment). Moreover, at that time, in the context of a *voir dire*, the party or parties who raised the objection can call witnesses to testify as to the linguistic competence of the witness in question. Accordingly, we will now proceed to swear in Mr. Trajkovic, permit counsel for the Union to examine him concerning the basis for his request for an interpreter, and then permit the other parties to cross-examine him concerning that matter, followed by re-examination by Union counsel. Each of the parties will then be permitted to call any other pertinent evidence which they wish to call concerning this matter, followed by reply evidence. Argument on this point will then follow the same order. In adopting this procedure which we view to be the most appropriate and expeditious manner in which to hear evidence concerning this matter, we make no finding at this point as to whether, as argued by the respondent, the onus is on the Union or Mr. Trajkovic to satisfy the Board that he does not understand or speak English, or, as argued by the Union, that the onus is on the respondent and the objectors to show that the request for an interpreter is not made in good faith. That matter may be further addressed in argument following the evidentiary portion of the *voir dire*.

When it became apparent from Union counsel's examination-in-chief of Mr. Trajkovic during the *voir dire* that Mr. Trajkovic had a reasonably good grasp of the English language, Union counsel agreed to proceed without an interpreter.

7. The respondent is a private company which manufactures buses at its facilities on Maingate Drive in Mississauga. On May 27, 1988 when the Union filed its application for certification, the respondent employed a total of approximately 460 people there, of whom, as indicated above, 337 are included in the bargaining unit for purposes of the count. Most of the employees work in the Company's main plant on Maingate Drive, but a few work across the street in another building which houses the Company's service department. There is also a plant in the State of New York, which operates under the name "Bus Industries of America". Don Sheardown is the President of the respondent and is also its major shareholder. He is a commanding and direct individual who generally tours the main plant and the service department at least once a day, and knows most of the employees on a first name basis.

8. The first witness called by the Union in these proceedings was Peter Galeota. As a result of his dissatisfaction with air quality in the plant, employees' lack of rights in dealing with the Company, and the respondent's failure to pay him the extra fifty cents per hour to which he felt entitled for performing the duties of a lead hand, Mr. Galeota contacted Clare Meneghini, who is a C.A.W. Staff Representative. Mr. Galeota and George Chioconi (another of the grievors who testified in these proceedings) met with Mr. Meneghini on Thursday April 7, 1988, to discuss unionization of the respondent. During that brief meeting, Mr. Meneghini described the organizing process and indicated that, in order to maximize the speed and efficiency of the drive, it would be advisable to recruit as many other people as possible to form an in-plant organizing group. During

their discussions with Mr. Meneghini, Messrs. Galeota and Chioconi agreed to bring some other interested employees to meet with Union officials after work on Friday April 15 at the Ramada Inn located a few blocks away from the plant. The C.A.W. Staff Representatives present at that meeting were Hassan Yussuff, Hemi Mitic, and Craig Grant. In addition to Messrs. Galeota and Chioconi, the grievors Mike Trajkovic, Oscar Valencia, Stanley Pietras, and Raimundo Sousa attended that meeting. Following a discussion about the rights of employees to unionize and the manner in which such rights may be exercised, C.A.W. membership cards (referred to in this decision as "cards" or "Union cards", for ease of exposition) were distributed at that meeting and the employees in attendance were given instructions about how to fill them out, and how to proceed with an organizing campaign.

9. Mr. Sousa spoke with a number of Company employees over the weekend and signed up seven of them on Saturday April 16, and six more on Sunday April 17. By talking to employees before work, during breaks, and after work, he also signed up five people on April 18, two people on April 19, and two more people on April 20.

10. Bryan Cox was at all material times the respondent's Production Manager, to whom its ten supervisors reported. There were also six foremen who each reported to one of those supervisors. When Mr. Cox arrived at work on Monday morning April 18, one of those foremen (Greg McIsaac) told him an employee had indicated that a number of the respondent's employees had met with Union representatives on the preceding Friday at the Ramada Inn. Mr. Cox relayed that information to Mr. Sheardown, who asked for the names of those employees. Mr. Cox's response was that he had heard that Brett Eland, Dale Sharp, and two other unnamed persons were in attendance at the meeting. Mr. Sheardown immediately went to Messrs. Sharp and Eland to ask them if they had attended that meeting and if they were involved in an organizing drive. Messrs. Sharp and Eland were (in the words of Mr. Sheardown) "upset that [he] would even think such a thing". They denied any knowledge of the meeting but told Mr. Sheardown they would find out who was involved and let him know.

11. About twenty minutes later Mr. Cox came to Mr. Sheardown's office and told him that he had learned that Mr. Galeota was one of the persons attempting to organize the Company. Mr. Sheardown then went into the plant and asked Mr. Galeota to come to his office. When Mr. Galeota did so around 8:15 that morning, Mr. Sheardown told him what Mr. Cox had said and asked him if he was one of the people attempting to organize the Company. After Mr. Galeota acknowledged that he was, Mr. Sheardown, who was very upset, asked Mr. Galeota why he would "stab [him] in the back" instead of going through the committee of elected employee representatives, or speaking directly to him as Mr. Galeota had done in the past. Mr. Sheardown also asked him why he wanted a union. Mr. Galeota replied that the Company had a "human rights" problem. In saying this, Mr. Galeota meant that, in his view, employees did not have any rights in dealing with the Company. However, Mr. Sheardown interpreted Mr. Galeota's comments as suggesting racial discrimination. Accordingly, he responded by stating that the Company had employees of every race, colour, and creed; that each employee was treated the same by management; and that the Company did not tolerate any type of racial discrimination. Mr. Galeota also told Mr. Sheardown that the Company had an environmental problem. He stated that the air was too polluted in the area in which he worked and that no one was doing anything about it. Mr. Sheardown responded by telling Mr. Galeota that the Ministry of Labour had tested the air in all parts of the plant, had posted the results, and had approved of what was being done by the Company to improve air quality. Mr. Sheardown acknowledged that there were areas in the plant where some improvement would be desirable, and stated that although funds had not been available during the previous two years to make those improvements, plans were in place to provide the necessary equipment over the ensuing twelve months. Mr. Galeota also mentioned his dissatisfaction with his



wages. When Mr. Sheardown asked Mr. Galeota who else was involved in organizational activities, Mr. Galeota said, "I'm sorry but I can't tell you." He also told Mr. Sheardown, "You can let me go but I'm not going to answer any more questions." However, Mr. Sheardown told Mr. Galeota that he was not going to discharge him. Mr. Sheardown also told him that he still had time to change his mind about unionization, and asked him to indicate before lunch time whether or not he was going to proceed with it. Mr. Sheardown further indicated that if the organizing campaign was going to proceed, he would have to take some action. Mr. Galeota said that he would speak with the other people involved to see if they wanted to meet with Mr. Sheardown in an attempt to resolve the employees' problems.

12. After meeting with Mr. Sheardown, Mr. Galeota returned to the Orion II line where he approached various employees to ask them if they wished to join the Union. Although he testified that those organizing activities took place during employee breaks, we accept the evidence of Marvin McMahon, another employee on the Orion II line, that Mr. Galeota and Mr. Chioconi approached him during working hours that morning before the first break and, after telling him that they were trying to unionize the plant, asked him if he wanted to join. We also accept his evidence that he saw Mr. Galeota approach other employees during working hours as well as during breaks. Although Mr. Sheardown denied doing so, we accept the evidence of Mr. Galeota that when Mr. Sheardown had not heard from him by noon, Mr. Sheardown called him back to his office and asked him if he had made up his mind. When Mr. Galeota told him that he had not yet talked to the other people involved, Mr. Sheardown said, "Okay, that's it" (or words to that effect). Mr. Sheardown then issued instructions for a general meeting of the employees to be called in the stockroom. In this regard, we feel that it is more likely that Mr. Sheardown forgot about this brief encounter than that Mr. Galeota invented it.

13. The calling of a general meeting of employees is not an unusual occurrence at the Company; it is clear from the evidence that general meetings of employees are called four or five times a year to update them concerning such matters as wage increases, customer orders, and press releases. Although no one has ever been disciplined for failing to attend, employees are expected to be in attendance at those meetings as they are held during working hours and are intended to convey significant information to employees. Mr. Sheardown generally meets first with employees in the plant and then holds a separate meeting in the service department. However, in this instance the service department employees were called over to the plant to attend the meeting there.

14. The general meeting held on April 18 was attended by approximately 350 employees. Although Mr. Sheardown used a microphone to address the employees, they were not all able to hear everything he said because some of the employees were also talking to one other at some points during the meeting. Mr. Sheardown's opening remarks were that this was an unscheduled but important meeting. He stated that a number of employees had met with the C.A.W. on the previous Friday night, and that an attempt was being made to organize the Company. Mr. Sheardown said that he did not understand why that was happening, and noted that they had worked hard over the years to form an employee representatives committee, a safety committee, and a social club, in order to give everyone an opportunity to make management aware of any problems they might have. He acknowledged that there were certain areas where the Company could improve upon working conditions, but stated that the Company was working on them and that any problems the employees had could be solved without a union. He also expressed the view that working together to resolve problems was going to be more beneficial to everyone than bringing in a third party to do their negotiating. Without naming Mr. Galeota, Mr. Sheardown told the employees that he had spoken with one individual who had asserted that the Company had a human rights problem and an environmental problem. He then repeated what he had earlier said about those matters.

15. Mr. Galeota testified that Mr. Sheardown stated at that meeting that the Company would not survive with a union. Mr. Trajkovic, who was the Union's second witness, made no mention of that statement in his evidence, but asserted that Mr. Sheardown said that he never wanted to own a company which had a union. Mr. Chioconi, the third witness called by the Union, also made no mention of the statement attributed to Mr. Sheardown by Mr. Galeota. With respect to the statement attributed to Mr. Sheardown by Mr. Trajkovic, Mr. Chioconi told the Board that Mr. Sheardown did not say that at the April 18 general meeting, although it was his recollection that Mr. Sheardown had made such a statement at a meeting held on the Orion II line during the summer of 1987. The Union's next two witnesses, Mr. Pietras and Mr. Valencia, testified that at the April 18 meeting Mr. Sheardown said that "the Union will destroy the Company". However, its next two witnesses, Mr. Janczyk and Mr. Sousa, had no recollection of any such statement being made, nor did they recall Mr. Sheardown making the statement attributed to him by Mr. Galeota, or the statement attributed to him by Mr. Trajkovic. In his testimony before the Board, Mr. Sheardown categorically denied making any of those statements at that meeting. Moreover, none of those statements is included in the Union's detailed allegations that form the basis of these proceedings, which allegations were based upon information given to the Union by the grievors shortly after the events to which they pertain. Had any such statements in fact been made by Mr. Sheardown, they would in all probability have been reported to the Union and included in those allegations. There was also conflicting evidence adduced regarding whether Mr. Sheardown suggested that if employees were offered Union cards they should throw them in the garbage. Having carefully considered all of the evidence, we have concluded on the balance of probabilities that Mr. Sheardown did not make any of the aforementioned statements at the meeting on April 18 or at any other time during the period to which the Union's allegations pertain.

16. Near the end of that meeting, Mr. Sheardown stated that his door was always open and that if anyone had any problems they could speak to him at any time. This prompted Mr. Trajkovic, who was standing near the back of the room, to holler that a supervisor had told him that he would be fired if he went to Mr. Sheardown's office again. When Mr. Sheardown asked Mr. Trajkovic for the name of that supervisor, Mr. Trajkovic refused to give it. Mr. Trajkovic also stated that a member of management had used offensive language in addressing him. Mr. Sheardown responded by saying that he would speak with Mr. Trajkovic after the meeting and take appropriate steps if Mr. Trajkovic gave him the names of the persons involved. When Mr. Galeota began to speak about the need for human rights in the plant, Mr. Sheardown brought the meeting to an end as he felt that people were about to begin "taking different sides of issues", and he was concerned that tempers might flare.

17. After the general meeting, Paul Mitchell, who was Mr. Trajkovic's supervisor at that time, brought him to Mr. Cox's office and left him there with Mr. Cox and Chris Walkey, the respondent's Production Superintendent. In the course of discussing the allegations which Mr. Trajkovic had made at the general meeting, Mr. Walkey acknowledged that he had lost his composure and called Mr. Trajkovic a "fool" and a "fucking farmer" several weeks earlier (when Mr. Trajkovic had disregarded his instructions and made a very poor job of certain radiator modification work that was assigned to him). However, he denied using the additional obscenity which Mr. Trajkovic had attributed to him. Mr. Cox asked Mr. Trajkovic to name the supervisor who had threatened to fire him if he went to see Mr. Sheardown, but Mr. Trajkovic refused to do so without Mr. Sheardown there. During that discussion Mr. Walkey asked Mr. Trajkovic why the employees needed a union. He also told Mr. Trajkovic about his own negative experience of working in a union shop. Mr. Trajkovic responded by stating that he was not a leader and had merely gone to the Union meeting to get information.

18. After Mr. Sheardown entered the office and asked Mr. Trajkovic who had threatened



to fire him, Mr. Trajkovic said that it was Paul Mitchell. When Mr. Mitchell was summoned, he denied Mr. Trajkovic's accusation. He repeated that denial in his testimony before the Board. After listening to both of them, Mr. Sheardown advised Mr. Trajkovic that he knew Mr. Mitchell to be a low-keyed supervisor and was of the opinion that Mr. Mitchell had not threatened to fire him. Mr. Sheardown also told Mr. Trajkovic that if he ever had a problem he should come directly to him about it.

19. During the lunch period after the general meeting on April 18, three employees told Mr. Trajkovic that they wanted to sign Union cards. Upon hearing this, Mr. Trajkovic proceeded to sign them up in his car in the Company parking lot. During that same lunch period, Mr. Valencia signed up three other employees as Union members. Mr. Trajkovic also served as the collector on five other cards that were signed that afternoon or evening.

20. As a result of his meeting with Mr. Sheardown, Mr. Galeota found himself "under a lot of pressure" and felt that he should not be required to handle the situation all by himself. Accordingly, he spoke with Mr. Chioconi, who had already signed a total of eight employees into the Union that day. Mr. Chioconi agreed to permit Mr. Galeota to tell Mr. Sheardown that he was one of the Union organizers. He also expressed a willingness to meet with Mr. Sheardown in order to take some of the pressure off Mr. Galeota. Mr. Galeota then returned to Mr. Sheardown's office to tell Mr. Sheardown that Mr. Chioconi was prepared to meet with him. Upon receiving that information, Mr. Sheardown arranged for Mr. Chioconi to be brought to his office. When he arrived there, Mr. Sheardown asked him why he wanted the Union, and why he had not come to see him about his problems. Mr. Chioconi replied that he could not bother Mr. Sheardown about every problem on the plant floor as Mr. Sheardown was paying people to look after those problems. Mr. Sheardown then accused Mr. Chioconi of stabbing him in the back. When Mr. Sheardown asked him what he saw the problems to be, Mr. Chioconi mentioned the need for better ventilation, more shower facilities, and supervisors with more knowledge and a better understanding of how to deal with employees. He also complained that some employees had been promoted to lead hand on the Orion II line without receiving the fifty cent per hour premium which they had been promised. Near the end of that meeting Mr. Sheardown said that he wanted to know what they were going to do regarding the Union. He told them that if the Union organizing drive continued they were going to see things that they wouldn't like to see. He also said that there would be fist fights because unionization was a very emotional issue. He added that it was a "very political thing", and that he knew about politics. Mr. Sheardown then asked them to think it over again, and said that he wanted their reply by the next day.

21. Mr. Sheardown also spoke that afternoon with Mr. Valencia. He angrily asked him why he had done this to him and why he wanted the Union. He also said that the damage was already done but that Mr. Valencia still had time to think about it.

22. The seven grievors and a few other employees met with C.A.W. Staff Representative Hassan Yussuff in a restaurant at the Ramada Inn after work that day and apprised him of the day's events. Some of those employees also stated that they wanted to know more about the Union before signing cards. Mr. Janczyk attended that meeting at the invitation of Mr. Sousa.

23. Mr. Cox was also at the Ramada Inn after work that evening for about an hour. He went there to have a drink with the plant manager from the American plant who was visiting the Canadian plant that day. That plant manager and Mr. Cox generally go to the Ramada Inn to relax and talk each time he visits, as it is the most comfortable place near the plant. Their presence there that evening had nothing to do with the Union. Indeed, Mr. Cox was unaware that anyone from the Union was going to be there that night. He remained unaware of the Union's presence until he



was on his way out of the hotel. As he was leaving, he encountered Mr. McMahon, who told him that a Union representative had been standing beside him in the lobby. When Mr. McMahon asked Mr. Cox if he had recognized the Union representative, Mr. Cox indicated that he had not. He then left the premises without attempting to find out anything more about what was going on there that evening.

24. On Tuesday April 19, Mr. Eland and three employee representatives approached Mr. Sheardown and requested permission to have meetings in the plant to see if the employees' problems could be resolved, and to determine if the employees wished to have a union. It was evident to Mr. Sheardown that Mr. Eland and the other persons who approached him were opposed to the Union and wanted to be sure that their fellow employees felt the same way. Mr. Sheardown testified that he agreed to permit the employee representatives to hold those meetings in the plant during working hours because he felt that employee problems and wishes had to be talked about. He also stated: "From my point of view, being the owner of the Company, I had to know whether or not we had done our job in the past as managers and owners. And if we hadn't, the employees had a right to bring in a third party. I had to be aware of that and I felt that this was the platform that would make that information available to me." With Mr. Sheardown's permission, the plant was shut down for most of that afternoon (at a cost of about \$8,000 per hour) for the purpose of holding those meetings. Thus, the employees in each department or work group met in the plant during working hours to discuss unionization.

25. The meeting involving the fifty or sixty employees from the Orion II line was held in the lunchroom. By the time of that meeting, most if not all of the employees on that line were aware that Mr. Valencia was one of the employees who had contacted the Union. Several of them asked him why he felt that a union was needed at the Company. Mr. Valencia responded by expressing the view that some of the employees were not being treated fairly by the Company. In speaking in favour of the Union at that meeting, he described what he felt the Union had to offer. Many of the employees expressed anger and frustration by yelling, cursing, and swearing at Mr. Valencia, and demanding to know what gave him the right to "take on something like that" without asking them first. However, their verbal abuse did not silence him, and he continued to speak in favour of the Union despite the fact that no one expressed agreement with him. He also suggested that employees attend a Union meeting to find out more about it.

26. After meeting with the employees in their respective departments or groups, the employee representatives told Mr. Sheardown that the general consensus was that the employees did not want a union. They also requested a list of the benefits provided by the Company to its employees. In response to that request, a list containing the following information was prepared and given to them by the Company:

WHAT OBI PROVIDES TO THEIR EMPLOYEES

- (1) Pays all medical premiums (includes dental & drug plan)
- (2) Pays all life insurance premiums
- (3) Pays above average hourly pay rate
- (4) Sponsors company baseball, hockey, soccer teams, etc.
- (5) Issues monthly employee newsletter
- (6) Contributes 1% to company pension plan
- (7) Provides funds totaling \$2,000.00 per hourly employee as a bonus incentive.

- (8) Constantly strives to improve working conditions
- (9) Formed an Employee Rep. Committee who meets with all employees and all levels of management.
- (10) \$1.00 Night Shift premium
- (11) Three weeks holidays after five years
- (12) Four weeks holidays after eight years.
- (13) The company contributes \$4.00 per month per employee to Social Club.
- (14) Safety Committee to address all safety related problems.
- (15) Fundsd [sic] are provided to further employee's education under approved programs.
- (16) Everyone, from an hourly paid employee to Management is given an oppornity [sic] to be heard through personal meetings with the President.
- (17) The company provides an annual dinner to recognize Social Club, Safety Committee, Employee Reps Committee and long term service employees to thank them for their contribution to the success of the company.
- (18) Gold Service Award pins are given to employees with ten years or more of service and a diamond pin after 15 years.
- (19) Company paid Christmas party for children of all employees, with gifts for everyone.
- (20) Rehabilitation programs for employees suffering from drug and alcohol abuse.
- (21) Company contributes \$35.00 twice a year towards the cost of safety shoes.
- (22) Company pays for and/or contributes to all protective clothing, such as coveralls, safety glasses, masks, etc.
- (23) Company pays for insurance on employee's personal tool boxes.
- (24) Affiliation with Credit Power Credit Union, allowing for payroll deductions...savings, loans, etc.

27. A substantial number of the Company's employees speak only Portuguese. To facilitate communications between those employees and members of management, an employee named Rui Pereira often serves as an interpreter, as he is fluent in English and Portuguese. Mr. Pereira was firmly opposed to unionization of the plant. During the week of April 18, he met with various Portuguese speaking employees on Company property during working hours to express his views to them. He also approached Mr. Sheardown and obtained permission to use the office of his supervisor (Eric Spokes) "to make sure that the Portuguese people at Ontario Bus understood totally their rights and benefits". He then called the Portuguese speaking employees into that office one at a time, translated the list of benefits provided by the respondent, and expressed the view that the employees did not need a union. Those discussions occurred not only during breaks but also during working hours. On the totality of the evidence, it may reasonably be inferred that in permitting him to use Mr. Spokes' office, Mr. Sheardown was aware that Mr. Pereira was opposed to the Union and wished to use the office to campaign against it.

28. On April 19, 20, and 21, employees signed petitions against the Union and brought them to Mr. Sheardown. Those petitions were circulated and signed in the plant. Although he did not direct the circulation of those petitions, Mr. Sheardown was of the view that they were an

appropriate way for employees to express their views. Thus, he directed the Company's supervisors to permit the petitions to be circulated in the plant. No disciplinary action was taken against employees for moving about the plant during that three-day period to circulate petitions and express opposition to the Union.

29. Mr. Sheardown testified that after the general meeting at which he made employees aware of the organizing drive, the plant was in a chaotic state with employees arguing and threatening to harm the organizers. Whenever Mr. Sheardown heard such threats, he warned the persons making them that disciplinary action would be taken against any aggressors regardless of which side of the unionization issue they were on. In this regard he told the Board that under a policy drafted by employee representatives in 1986, any pushing or shoving would result in a suspension of the aggressor, and any striking of another employee would result in termination of the aggressor's employment. It was also Mr. Sheardown's evidence that the Orion II line was the most volatile area in the plant, because a number of the employees who worked on that line were aggressive young people who (in the words of Mr. Sheardown) "love to fight". Mr. Sheardown further testified that Mr. Galeota worked in an area where there would be serious injury to employees if there were any pushing or shoving. Thus, Mr. Sheardown told the Board that he decided that it would be in the best interests of Mr. Galeota, the other employees, and the Company, to transfer Mr. Galeota from the Orion II line to the service department. He made that decision on Monday evening, and decided at the same time to transfer Mr. Chioconi from the Orion II line to the electrical department, but did not implement the transfers until after speaking with Mr. Cox the next morning and obtaining his concurrence.

30. Prior to April 19, Mr. Galeota worked on the Orion II line as an air line troubleshooter who moved all over the line to perform his job. After Mr. Galeota arrived at work that morning, Mr. Cox took him to Mr. Sheardown's office where, in the presence of Mr. Cox and John Leether, the supervisor of the service department, Mr. Sheardown told Mr. Galeota that he was going to be transferred to the service department for his own protection. Although Mr. Galeota had not personally experienced any difficulties with other employees, he acknowledged in cross-examination that there was a possibility of a fight breaking out in the plant over the Union because emotions were running high, with some employees being strongly in favour of the Union and others strongly against it. Mr. McMahon, who also worked on the Orion II line, told the Board that people on that line were saying that Mr. Galeota was "going to get his head kicked in if he didn't stop" his organizing activities. Similar sentiments were expressed concerning Mr. Valencia, since many of the employees were very angry that the organizers had taken it upon themselves to contact the Union without first consulting with the other employees. The evidence also indicates that some of the employees called the organizers "immigrant dogs", and made racial slurs against them.

31. Mr. McMahon told Mr. Sheardown early that week that there was trouble on the Orion II line, and that if something was not done about it, somebody was going to get hurt. During that conversation he also repeated what some of his co-workers had said about the employee organizers getting their heads kicked in. Mr. McMahon did not mention any names as he did not want any of his co-workers to lose their jobs. Mr. Sheardown stated that anyone who resorted to violence would be in trouble, and requested Mr. McMahon to try to make sure that nothing happened.

32. In advising Mr. Galeota of his transfer, Mr. Sheardown also told him that he was not permitted to enter the plant, and that he was not to talk about the Union on Company property at any time, including lunch time and breaks. In his testimony before the Board, Mr. Sheardown stated that the reason he gave those instructions to Mr. Galeota (and to each of the other grievors who were transferred) was that threats were being made, and continued attempts by employee



organizers to discuss the Union with other employees could have led to violence. Mr. Galeota was also given the following letter (on Company letterhead) signed by Mr. Cox:

WRITTEN WARNING

April 19, 1988

Mr. Peter Galeota:

Effective this date you have been transferred to new areas. This is for your protection, and a temporary basis [sic].

I remind you that, soliciting or actively organizing union activities on company time or property is strictly forbidden.

If you are found doing this, a more serious form of discipline may arise.

Although in their testimony before the Board Messrs. Sheardown and Cox attempted to characterise that letter as non-disciplinary, it is readily apparent from the heading and the final sentence that the letter was intended to be disciplinary, and to convey to Mr. Galeota and anyone else who became aware of it that union solicitation on Company time or property could result in more serious disciplinary action. No such warning was given to any of the employees who engaged in activities in opposition to the Union on Company time or premises.

33. After Mr. Galeota left Mr. Sheardown's office, Mr. Leether accompanied him as he returned to the Orion II line to get his tool box, and then escorted him to the service department. When other employees asked him where he was going, Mr. Galeota was prevented from answering by Mr. Leether, who reminded him that they were on working time and were not out to socialise. After they arrived in the service department, Mr. Leether called together the employees in that department and told them that Mr. Galeota was going to be working with them as he had been transferred there for his own protection. Mr. Leether also told them not to gather in groups.

34. Although Mr. Galeota was disturbed about the manner in which he was transferred to the service department and the restrictions placed upon him, he was not troubled by the transfer itself. Indeed, he had earlier requested to be transferred there. In describing that department, Mr. Galeota told the Board, "The work environment in the service department is beautiful. The working conditions are a lot better [than in the main plant]. The work is more interesting; there's more variety." He also acknowledged that a lot of the respondent's employees would like to work in the service department. Mr. Galeota did not suffer any reduction in pay or benefits as a result of the transfer.

35. Mr. Chioconi reported for work on April 19 at his usual starting time of 7:30 a.m. After working about half an hour in his regular position as an electrical assembler at the end of the Orion II line, he was approached by Mr. Cox, who told him that Mr. Sheardown wanted to see him. Mr. Chioconi proceeded to Mr. Sheardown's office where, in the presence of Mr. Cox and Lou Perdomo, the supervisor of the main plant's electrical room, Mr. Sheardown told him that for safety reasons he was going to be transferred to the electrical department under Mr. Perdomo's supervision. Mr. Sheardown also told Mr. Chioconi that he was not to involve himself in any Union activities on Company premises at any time, and stated that he was going to be closely watched. Mr. Chioconi testified that he had not received any threats from any other employees, and that nothing had occurred to cause him to have any concern for his safety. Mr. Perdomo escorted Mr. Chioconi to the electrical room where he was assigned a work table and given some work to perform. About ten employees work in the electrical room.

36. Later that morning, Mr. Chioconi was called to the personnel office where he was given a "written warning" letter similar to the one which was given to Mr. Galeota (as quoted above). For the first two or three weeks after his transfer, Mr. Chioconi was escorted by a foreman whenever he left the electrical room to pick up blueprints or diagrams from the assembly line or for any other purpose. None of the other persons in the electrical room was treated in that manner.

37. Mr. Chioconi was still working in the electrical room as of December 20, 1988, when he testified in these proceedings. During the course of argument on July 5, 1989, Union counsel advised the Board that Mr. Chioconi had recently left the respondent's employ and that he wanted damages for mental distress. However, even if it is assumed that the Board could award such damages in appropriate circumstances, there is no evidence before us which would warrant such an award in the instant case.

38. Mr. Trajkovic was also transferred to a different job on April 19. Prior to the transfer he worked in the engine assembly area, which is a very busy area with numerous employees walking by on their way to and from the lunch room and the washroom. Mr. Sheardown testified that he decided to transfer Mr. Trajkovic because he was travelling around the plant disrupting the workplace and agitating other employees. He also took into account the fact that Mr. Trajkovic had previously been suspended for his part in an altercation with another employee. On April 19, after arriving at the plant and proceeding to the engine assembly area, Mr. Trajkovic was approached by a member of management a few minutes before the start of the shift and taken to Mr. Sheardown's office where Mr. Sheardown, in the presence of Messrs. Mitchell and Cox, told him that they knew he was a Union leader and that they had decided to remove him from his job for his own protection. Mr. Trajkovic initially took this to mean that he was being discharged. Thus, he was very relieved to hear that he was merely being transferred to a different area. It was Mr. Trajkovic's evidence that while Mr. Sheardown was at the door of his office speaking with someone else, Mr. Cox said (to Mr. Trajkovic), "I'm going to break your nose." However, we are unable to accept that evidence, which was contradicted by the testimony of Mr. Cox whom we found to be a more reliable witness than Mr. Trajkovic. Mr. Cox categorically denied making any threat to Mr. Trajkovic, and it is clear from the totality of the evidence that Mr. Cox is a calm, soft-spoken person who neither engages in nor threatens violence. For purposes of this decision, it is unnecessary to determine whether Mr. Trajkovic intentionally fabricated that allegation, or merely misunderstood something which Mr. Cox told him in attempting to explain management's decision to transfer him "for his own protection".

39. Mr. Trajkovic told the Board that while taking him to his new job in the air system assembly area, Mr. Walkey repeated the obscenities which Mr. Trajkovic had earlier attributed to him. He further testified that Mr. Walkey told him that he would not be given any training on his new job, and that if he did not "give production" on the first day he would be fired. It was also his evidence that Mr. Walkey denied his request to be provided with blueprints concerning his new job, and told him that management was going to fire him because he had gone against them. However, we accept the evidence of Mr. Walkey, whom we found to be a more reliable witness than Mr. Trajkovic, that what Mr. Walkey actually said was that he would not be calling Mr. Trajkovic a "fucking farmer" anymore because if he gave Mr. Trajkovic a warning it would have to be in writing. (Mr. Walkey told him that because in making his allegations on the previous day, Mr. Trajkovic had added words that Mr. Walkey had not said, thereby alerting Mr. Walkey to the need to use documentation to "keep the facts straight".) Mr. Walkey acknowledged that Mr. Trajkovic asked for blueprints. He responded to that request by saying, "Mike, you know that we don't have blueprints." We accept Mr. Walkey's evidence that he did not threaten to fire Mr. Trajkovic. We also accept his evidence that when Mr. Trajkovic indicated that he would need time to learn the new job and someone to train him on it, Mr. Walkey said that Stanley Pietras would train him and

that he would have a month to learn the new job, to which Mr. Trajkovic responded that he would only need two weeks. Mr. Pietras was one of the four employees who worked in the air system assembly area located at the south end of the main plant.

40. When they arrived in the air system assembly area, Mr. Walkey advised Mr. Pietras that Mr. Trajkovic was going to take over as the “build up person”, and that Mr. Pietras would have to teach him the job and then take over Mr. Trajkovic’s old job. When Mr. Pietras asked why Mr. Trajkovic was being transferred, Mr. Walkey told him that Mr. Trajkovic was involved in the Union and that the transfer was for his own protection. However, Mr. Pietras did not understand what Mr. Walkey meant. In an attempt to explain it, Mr. Walkey said that someone had threatened to punch Mr. Trajkovic in the nose. Mr. Trajkovic then said, “Brian Cox told me this.” Mr. Walkey did not understand Mr. Trajkovic to be accusing Mr. Cox of threatening to punch his nose, but rather interpreted this to mean that Mr. Cox had explained to Mr. Trajkovic that it was necessary to transfer him because he might get punched in the nose if he remained where he had been working. Thus, Mr. Walkey did not comment on that statement.

41. Mr. Pietras went to Mr. Walkey’s office later that day to protest the decision to put Mr. Trajkovic on his job and to have him do Mr. Trajkovic’s old job. He noted that this made no sense as neither knew how to do the other’s job. Mr. Walkey stated that Mr. Pietras was being moved because of his allergic reaction to one of the materials he had been working with, and because once he had finished training Mr. Trajkovic to do the job there would not be enough work for both of them. (The problem of Mr. Pietras’s allergic reaction had been temporarily solved by shifting that work to an employee in another department. However, Mr. Pietras’s foreman had indicated that it might be necessary to transfer Mr. Pietras as he wanted that work done in the air system assembly area.) Mr. Pietras then returned to his work area and proceeded with his training of Mr. Trajkovic.

42. Mr. Trajkovic left the air system assembly area and went to the stockroom to get some parts around 9:15 a.m. on April 19. When he attempted to return to the air system assembly area, the passageway was blocked by Dale Sharp (one of the employees who appeared on behalf of the objectors at the hearing of these matters) and another employee. It was Mr. Trajkovic’s evidence that Mr. Sharp called him “doggie”, imitated a dog by making growling sounds, and said that he was going to break his nose. (Mr. Sharp was present throughout the proceedings as a representative of the objectors, but elected not to testify or to call any evidence.) Mr. Trajkovic also told the Board that Mr. Sharp told him that he was going to kill him. Although the former threat is mentioned in Mr. Trajkovic’s statement that was taken by a Union official later that day, the latter threat is not. Under the circumstances, it appears to us to be but one of many embellishments which Mr. Trajkovic added during the course of his testimony in an attempt to make his evidence more compelling.

43. When Mr. Trajkovic’s foreman found out what had happened, he said that he would speak to Mr. Sharp and his companion. He also told Mr. Trajkovic not to worry as no one could touch him. There is no evidence before the Board as to whether the respondent took any disciplinary or other action against Mr. Sharp or his companion in respect of that incident.

44. Several employees who wanted to sign Union cards approached Mr. Trajkovic in the air system assembly area on April 19 to obtain information about where to sign. They also wanted to know why Mr. Trajkovic was working in that area. Mr. Trajkovic told them that he could not talk until after work because he did not want to lose his job. Just before he left the plant at the end of the shift on April 19, Mr. Trajkovic was given a “written warning” letter similar to the ones received by Messrs. Galeota and Chioconi. When he gave him that letter, Mr. Cox accused Mr. Trajkovic of stealing Company time by signing Union cards. In making this accusation, Mr. Cox



was not proceeding on the basis of any knowledge or information, but merely on the basis of his assumption that Union organizers were signing up employees on Company time. When Mr. Trajkovic stated that he had only signed cards on his own time during the lunch period, Mr. Cox told him that if he signed any more cards on Company property he would be fired immediately.

45. After leaving the plant, Mr. Trajkovic went to a nearby donut shop where he, Mr. Pietras, and some of the other Union organizers had told employees they could come after work to sign cards. Mr. Trajkovic sat at one table and signed up two employees, while Mr. Pietras signed up three other employees at another table. Mr. Valencia was also there that afternoon and served as the collector on one card. Approximately twenty employees came to the donut shop that afternoon. Mr. Galeota also came there about twenty minutes after Messrs. Pietras and Valencia arrived, but he did not sign anyone into the Union at that time (or at any other time, with the exception of one occasion in early June when he served as the collector on a card).

46. On the morning of Wednesday April 20, Messrs. Trajkovic and Pietras went to the stockroom to get some fittings. It was Mr. Trajkovic's evidence that while he was in the stockroom, something hit him on his right shoulder and something else hit him on the right side of his head, making his legs become weak and causing him to fall to the floor with tears in his eyes and a feeling of dizziness and nausea. Mr. Pietras testified that he accompanied Mr. Trajkovic to the stockroom that morning because Mr. Trajkovic was afraid to go by himself. It was also his evidence that while he was looking into a shelf in the stockroom, he heard an object fly past his ear, saw Mr. Trajkovic duck down with his left hand on his right shoulder, observed a piece of beeswax (of the type used in the plant for lubrication purposes when cutting aluminium) rolling on the floor, and concluded that someone had thrown it at Mr. Trajkovic. He then looked to see who had thrown it but did not see anyone. Mr. Pietras retrieved that piece of beeswax, which was two or three inches long and about three inches in diameter. He later gave it to Paul Mitchell, who passed it on to Rene Lafontaine, the supervisor from the Orion I area. Mr. Mitchell called Mr. Lafontaine to the scene because he concluded that if Mr. Pietras's description of the incident was correct, the beeswax would have to have been thrown into the stockroom from that area, which is separated from the stockroom by a twelve-foot fence.

47. The evidence of Messrs. Trajkovic and Pietras stands in stark contradiction with that of Nelson Palomo, who at the time of the incident had been employed by the Company for approximately six months. Mr. Palomo (who testified through a Spanish interpreter) told the Board that on April 20 between 8:00 and 9:00 a.m. he went to the stockroom to pick up some rivets. As he was going there, Mr. Trajkovic was walking four or five metres in front of him with a piece of beeswax cupped in his right hand in a manner which suggested that he was attempting to hide it. After Mr. Trajkovic arrived in the stockroom, Mr. Palomo witnessed him throw the beeswax on the floor and then begin yelling that someone had thrown it at him and struck him with it. Mr. Palomo, who did not see Mr. Pietras in the stockroom at that time, left the area shortly after another employee (Angel Amitrano) heard Mr. Trajkovic yelling and brought Mr. Mitchell to the stockroom. When Mr. Mitchell arrived in the stockroom, he found Mr. Trajkovic breathing very heavily and holding the back of his neck. Although he did not remember seeing Mr. Palomo, Mr. Mitchell told the Board that there were some people around but he did not pay any attention to them because he was concentrating on Mr. Trajkovic. Mr. Palomo did not say anything to Mr. Mitchell or to anyone else at that time about what he had observed, because he thought it was a trivial incident that had been staged by Mr. Trajkovic in order to go home early, and did not want to become involved in something that was none of his business. It was not until later that week when Mr. Palomo learned that Mr. Trajkovic was a Union organizer who was claiming to have been injured by objects thrown at him in the stockroom that Mr. Palomo realized the significance of what he had witnessed. He then told his supervisor (Jorge Velez) about it and was subsequently taken to Mr.

Sheardown's office to tell him what he had witnessed. We found Mr. Palomo to be a more credible witness than Mr. Trajkovic and Mr. Pietras. Accordingly, we accept his evidence as a more reliable description of what actually occurred in the stockroom that morning.

48. Andrija Vodopija also testified concerning that incident. He worked as a sub-assembler in the air system assembly area at a bench in front of Mr. Trajkovic's bench. Mr. Vodopija saw Messrs. Trajkovic and Pietras leave the area together that morning with the bucket used to carry parts from the stockroom. When Mr. Trajkovic returned to the area about half an hour later, he was holding the left side of his neck, and was crying. He was very red in the face and had a scratch about an inch long on the left side of his neck. The scratch was red but was not bleeding. Mr. Vodopija asked him what had happened and he said, "Nothing, nothing, nothing." Mr. Trajkovic then knelt between his bench and his four-foot high tool box, and knocked the right side of his head on the corner of his tool box five or six times. When Mr. Vodopija saw Mr. Trajkovic doing this, he went over to him, pulled his head back, and asked him "Are you crazy? What is going on?" Mr. Trajkovic replied, "They hit me. They tried to kill me!" Mr. Trajkovic also told Mr. Vodopija that someone had thrown some beeswax at him. The plant nurse then arrived and asked Mr. Trajkovic two or three times to go to her office, but he refused. Then Mr. Sheardown came and requested Mr. Trajkovic to go with him to the nurse's office, but Mr. Trajkovic continued to refuse. After Mr. Sheardown had repeated that request once or twice more to no avail, Mr. Trajkovic reluctantly complied after Mr. Sheardown ordered him to do so.

49. While the nurse was examining him in the presence of Mr. Sheardown, Mr. Trajkovic said that he had been struck on the side of his head and that he was sore all over. Mr. Sheardown then directed a foreman to take him to a nearby medical clinic where a physician diagnosed Mr. Trajkovic to have a head injury evidenced by two red areas. The patient information and treatment record prepared by the physician indicates that Mr. Trajkovic attributed his injuries to attempted unionizing at the Company. It also indicates that Mr. Trajkovic told the physician he had been threatened with physical violence by management. Mr. Trajkovic and the foreman then returned to the plant with a copy of that document. When Mr. Sheardown read the latter statement, he asked Mr. Trajkovic what member of management had threatened him with physical violence. Mr. Trajkovic initially refused to answer, but ultimately stated that Mr. Cox had threatened to break his nose. Although Mr. Sheardown found that difficult to believe in view of the fact that Mr. Cox is a "low-keyed" individual who is "not a physical person", he decided to allow Mr. Trajkovic to remain away from work for three days with pay while the Company investigated his allegations. After Mr. Trajkovic went home, Mr. Sheardown immediately asked Mr. Cox if he had ever threatened Mr. Trajkovic with physical violence. Mr. Cox replied that he had not, and Mr. Sheardown accepted his denial as being truthful, as do we.

50. Mr. Sheardown directed Mr. Lafontaine to conduct a full investigation of Mr. Trajkovic's allegation that he had been struck by two thrown objects in the stockroom. That investigation revealed that Mr. Trajkovic had faked the incident and had intentionally struck his head on his tool box after returning to his work area from the stockroom.

51. After the Company's investigation was completed, Mr. Sheardown decided to discharge Mr. Trajkovic. His termination letter, which is dated April 29, 1988 and signed by Mr. Sheardown, reads as follows:

The following is a chronological order of a sequence of events wherein you made false statements and actions while in the employ of Ontario Bus Industries Inc.:

APRIL 12, 1988

Told Paul Mitchell that if he would give you a \$.50 per hour increase, that you would inform him about something that was going to occur in the near future that would be very damaging to the company.

APRIL 19, 1988

Informed Don Sheardown that Paul Mitchell threatened to terminate you if you talked to Mr. Sheardown. After discussions with Paul Mitchell and yourself, this statement was proven to be false.

APRIL 20, 1988

Reported that while in the stockroom, you got hit by a flying object. You then walked back to your work station and intentionally banged your head five times on your own tool box. This was witnessed by an employee and he has sworn to same on an affidavit.

APRIL 20, 1988

Reported to Company doctor that a Senior Manager had threatened to "break your nose" if you did not refrain from union activity. This statement by you has proven to be false.

Due to the above false statements and the fact that you intentionally tried to cause injury to yourself in an attempt to embarrass the company and after a police investigation which was irresponsibly initiated by yourself, your employment at OBI is hereby terminated and all benefits cease as of April 29, 1988.

52. The police investigation initiated by Mr. Trajkovic resulted in Mr. Trajkovic himself being charged with committing public mischief (contrary to section 128 of the *Criminal Code*). The transcript of the oral judgment in which Provincial Court Judge Weseloh dismissed that charge includes the following reasons:

In this case, axes have been ground for nearly three days. Looming large behind the instant charge is an acrimonious labour dispute.

In evidence are discrepancies which cannot be reconciled. On the issue of credibility, it appeared that the principal witnesses applied a gloss to their evidence, which reflected their respective biases arising from the background labour issue. This Court is frankly not certain whose evidence should be preferred.

• • • •

On the whole of the evidence, this Court is frankly no more certain that the accused person feigned being struck by objects in the stock room than the Court is certain that the accused was struck by objects in the stock room April the 20th, 1988. Maybe to some degree the accused person was playing the "Munchausen". On the other hand, maybe he was struck. This Court cannot say to the degree of a moral certainty what happened. In consequence, there's a considerable doubt as to what happened in the stock room April the 20th, 1988. On that doubt which must be weighed in favour of the accused, the charge is dismissed.

[The Judge's comments on particular parts of the evidence adduced before him have been omitted.]

The dismissal of that charge is not determinative of any of the issues before us. Proof in Board proceedings is based upon the balance of probabilities, rather than proof beyond a reasonable doubt. Moreover, the parties and the issues before us differ from those in the Provincial Court proceedings.



53. As indicated above, we did not find Mr. Trajkovic's evidence concerning the beeswax incident to be credible. His testimony contained a number of inconsistencies and was lacking in candour. For example, he initially stated in cross-examination that he returned to his work area instead of going to the nurse's office after he was struck because he had to finish his work. However, it is clear from the evidence that he did not resume his work when he returned to his work station. Moreover, after further cross-examination in which he conceded that he had been to the nurse's office about ten times in the preceding two or three years, he asserted that the reason he had not gone directly to the nurse's office that day was because "she's not very good". After further cross-examination, he contradicted his earlier evidence yet again by stating that he did not even think about the nurse's office as he just wanted to go somewhere and sit down. Having regard to all of the evidence, we find that the true reason that Mr. Trajkovic did not proceed directly to the nurse's office was that an examination by the nurse at that time would have indicated that he had not suffered any injury. On the totality of the evidence, we are satisfied on the balance of probabilities that the only injuries which Mr. Trajkovic suffered that day were self-inflicted, and that he returned to the air system assembly area and banged his head on his tool box five or six times in an attempt to bolster the believability of his false assertion that he had been struck by two thrown objects in the stockroom.

54. Although the discharge of an organizer during the course of an organizing campaign must of course be subjected to very careful scrutiny by the Board, we are satisfied on the totality of the evidence that the reasons given for Mr. Trajkovic's discharge in the above-quoted letter were the true and sole reasons for his discharge, and that his discharge was not motivated by anti-union animus. Accordingly, we have concluded that the Company did not contravene the Act in terminating Mr. Trajkovic's employment.

55. During the afternoon of April 20, Mr. Sheardown told Mr. Pietras that he was not to talk about the Union, sign any Union cards, or engage in any other organizing activities on Company property. Mr. Cox also came to Mr. Pietras's working area and stated that he was not allowed to use the telephone and that he was not to go anywhere in the plant without his foreman or supervisor. He also told Mr. Pietras that he could not sign Union cards on Company property. Mr. Walkey brought Mr. Pietras to his office about half an hour later to discuss the job to which Mr. Pietras was to be transferred after he finished training Mr. Trajkovic. Mr. Pietras reiterated that he did not want to move to another job. He also brought out a book concerning employer-employee rights and said that everyone, including members of management, had to respect those rights. However, Mr. Walkey expressed the view that he had the right to place Mr. Pietras in a different work location. When Mr. Pietras suggested that he was being moved because he was a Union organizer, Mr. Walkey said that was not the reason, and reminded him that he had told him about the transfer on the previous day when he did not even know that Mr. Pietras was involved in any Union activities. During that discussion, Mr. Walkey asked Mr. Pietras why he had become a Union organizer. Mr. Pietras replied that he had a "constitutional right" to organize for the Union, and also asserted that the Union was going to get him more money. When Mr. Pietras stated that the employees at the American (Bus Industries of America) plant were being paid more than those at the Canadian plant, Mr. Walkey, who knew this to be untrue, told Mr. Pietras that he was "full of shit".

56. Some of the organizers also went to the aforementioned donut shop after work on April 20. Mr. Valencia signed up two more employees there that day, as did Mr. Pietras. They then proceeded to the Ramada Inn where the Union staff representatives had rented a meeting room for the purpose of speaking with employees of the respondent. Approximately seventy of the respondent's employees, including many people from the Orion II line, attended that Union meeting. The employees were informed of the meeting by word of mouth in the plant. Mr. Eland spoke with

many of the employees on the Orion II line and encouraged them to attend the meeting “to show the organizers the support the Company had, and to try to discourage them from organizing”. In his testimony, Mr. Eland also stated, “I spent most of the day Wednesday walking around the plant asking people what their stand was, and if they said they were against association with the Union I asked them if they’d be interested in coming.” Mr. Eland estimated that he recruited at least twenty employees in this fashion.

57. Around the time of that meeting, three or four of the Company’s foremen positioned themselves in the hallway near the meeting room. When Mr. Yussuff was made aware of their presence, he approached them and told them that the meeting was for workers only and that they were not welcome there. The foremen then left the area of the meeting room.

58. The meeting was led by Messrs. Grant, Yussuff, and Meneghini. Mr. Grant opened the meeting by telling the employees a few things about the Union. Some of the employees then asked questions about matters such as what the Union had to offer and what it would be taking in return. The organizers were also presented with a list of the Company’s existing benefits, and were asked how many on the list they could guarantee. They were also asked what sort of income the employees would receive in the event of a strike. The Union representatives attempted to respond to those questions, but were met with vocal opposition from many of the employees. After asking a question, one of the employees said, “I know there’s some that want a union here but I don’t think we need the fucking C.A.W.” Mr. Grant then held out some Union cards and said, “I don’t know how many of you feel that same way, but if any of you don’t I have some cards here and you can sign them” (or words to that effect). The meeting then came to an abrupt end when most of the employees got up and walked out, leaving only the Union representatives and a few employees.

59. Mr. Eland and some other employees informed Mr. Sheardown of what had occurred at that meeting. His reaction to that information was that it was “sufficient evidence that [the employees] didn’t want to be organized and [that it was] time to get back to building buses.” On April 21 or 22, Mr. Sheardown called another general meeting of employees. At that meeting he reported that he had a sworn affidavit from an employee who had witnessed Mr. Trajkovic strike his head on his tool box. He also stated that sixty-five employees had walked out of the Union meeting on Wednesday night, that a majority of employees supported the Company and did not want the Union, and that it was now time after a troubled week to go back to work.

60. On April 21 Mr. Pietras’s foreman confirmed the limitations which Mr. Sheardown had imposed on Mr. Pietras the previous day. Mr. Pietras was also given the following letter from Mr. Cox that day:

#### WRITTEN WARNING

April 21, 1988

Mr. Stanislaw Pietras:

This written warning is, and a copy of the notice regarding theft of property or time, to remind you that soliciting or organizing union activities on company property and company time is not permitted. [sic]

If you are found doing this, a more severe form of discipline, resulting in suspension or termination may arise.

61. Similar letters were also given to Messrs. Valencia and Sousa that day. When Mr. Valencia was given his copy of that letter, Mr. Cox told him that he would have problems such as suspension or termination if he was found engaging in Union activities on Company time or prop-

erty. The reference in those letters to a “notice regarding theft of property or time” is a reference to the following notice which was posted throughout the plant on or about April 6, 1988:

TO ALL EMPLOYEES:

Over the past several months, our company has experienced the theft of equipment, materials and employee's personal tools.

This problem has cost our company a great deal of money and because of this loss, we will now require a new policy to be effective as of today.

NO COMPANY MATERIALS (NEW, SCRAP OR OTHER), WILL BE REMOVED FROM THE COMPANY PROPERTY.

Employees who wish to take their personal tools off company property will require one of the following signatures:

Bob Hutchinson  
Don Hutchinson  
Chris Walkey

Effective immediately, we will have security personnel on duty 24 hours per day, 7 days per week, to protect our work place and equipment.

Any employee found breaching the above policy will be subject to immediate termination and criminal charges being laid.

Theft of materials, equipment and time affect us all and the loss will eventually affect our profits which in turn means less money in our pay cheques.

I ask for everyone's complete cooperation in adhering to this policy.

(signed)  
Donald K. Sheardown  
President

62. Mr. Pietras signed up three more employees at the aforementioned donut shop after work on Friday April 22. On the following Monday, the Company transferred him to the service department from the air system assembly area where he had worked for two and a half years. Mr. Sheardown told Mr. Pietras that the transfer was for his own protection, and also told him that he could not use the telephone, come to the plant, or sign any Union cards on Company property. Following the transfers of Mr. Pietras and Mr. Sousa to the service department, Mr. Sheardown met again with the employees in that department to inform them that those two grievors had been moved there for their own protection because of things that were going on in the plant. According to Mr. Pietras, Mr. Sheardown separated the Union organizers from the other employees at that meeting, and stated that he would not be the owner of a company with a union. However, we reject that testimony, which was contradicted by other evidence that we found to be more reliable.

63. On April 21 Mr. Sousa received a written warning from Mr. Walkey for failing to properly adjust the doors on certain buses. Although he acknowledged that he “might have mistakenly left a screw on a bus door untightened”, he said it was not unusual as “everyone makes a mistake sometimes”. He also told the Board that he was of the view that he had received that warning because he was involved with the Union. Mr. Walkey testified that although at the time he gave Mr. Sousa that written warning he knew that Mr. Sousa was active in the Union, this did not have anything to do with him receiving the warning. He told the Board that he was initially not going to give Mr. Sousa a written warning because he was concerned that it might look like he was picking



on a Union member. However, when he asked Mr. Sheardown about it, Mr. Sheardown told him not to treat Union members any differently from other employees, and instructed him to treat the situation in the same manner that he would any other time. Mr. Walkey then proceeded to give Mr. Sousa the written warning. We found Mr. Walkey to be a forthright and candid witness whose evidence satisfies us that the respondent did not deal with Mr. Sousa contrary to the Act in giving him that written warning.

64. On April 21, Mr. Sheardown called Mr. Sousa into his office and accused him of starting rumours in the plant that Mr. Sheardown had given him an extra dollar per hour to back off his Union activities. Although Mr. Sousa denied starting or spreading any such rumours, Mr. Sheardown gave him the following written warning later that day:

This written warning is with regard to a meeting held in my office at 8:15 a.m. today.

I have been advised by a fellow employee that you stated to him that Don Sheardown had given you a \$1.00 hourly increase to back off your union activity.

This statement is in fact a complete fabrication which was verified by a member of the management staff who attended this meeting.

This statement made by you has caused a severe disruption in our plant among other employees. Any further false statements which are made by you in a manner to cause turmoil in our workplace will be reason to suspend or subject you to termination of employment.

I ask for your co-operation in bringing our plant back to a more orderly work environment.

65. Mr. Sousa told the Board that what had occurred, and what he told Mr. Sheardown prior to receiving that written warning, was as follows. While three or four employees, including Manuel Machado, were conversing in a group, Mr. Sousa asked, "Why doesn't the Company offer \$1.00 more to each employee so they'll stop their Union activity?" It was also his evidence that he told them that if he personally was offered a \$1.00 raise, he would not stop as he was organizing for the people who wanted the Union, and not for his own problems. However, Mr. Sousa's evidence was contradicted by the testimony of Mr. Machado, whom we found to be a more reliable witness than Mr. Sousa. Mr. Machado testified that Mr. Sousa told him and three or four other Portuguese speaking employees that Mr. Sheardown "talked to him to stop the Union" and gave him a dollar increase. As a result, the rumour referred to in the letter was spread around the plant, causing disruption, confusion, and concern.

66. During his discussions with Mr. Sheardown that day, Mr. Sousa repeatedly asked Mr. Sheardown to fire him or lay him off, but Mr. Sheardown declined to do so because he was a good worker. When he was asked (during cross-examination) why he made those requests, Mr. Sousa said, "Because I didn't like war. Because I'd just prefer to go away instead of involving myself in all of that." In explaining what he meant, Mr. Sousa told the Board that "when arguments start, tempers start to flare, and management was getting into arguments and even workers amongst themselves were getting into arguments." During those discussions, Mr. Sheardown instructed Mr. Sousa to come to his office on the following day so that they could further discuss his wish to be fired or laid off. However, Mr. Sousa did not report for work on April 22, but instead went to see his physician about the stress which he was experiencing.

67. Mr. Sheardown transferred Mr. Sousa to the service department on April 25 and placed limitations upon him similar to those imposed on the other transferees. In his testimony before the Board, Mr. Sheardown indicated that he transferred Mr. Sousa because he had started the aforementioned rumour (about Mr. Sheardown giving him a dollar an hour to back off the Union), and because he was travelling throughout the plant disrupting the workforce. In his testimony before

the Board, Mr. Cox, who was also involved in the transfer decision, confirmed that Mr. Sousa was transferred because employees were very agitated by his statement about receiving a raise for backing off the Union. He further testified: "Work was to be done. Fighting is not part of it. If there was going to be confrontation, we did not want him to be part of it." Following his transfer, Mr. Sousa did not sign any more employees into the Union because the prohibition against returning to the plant deprived him of the opportunity of readily speaking with his former co-workers, and because all of the problems which he was having with management made him lose interest in the Union.

68. On Friday April 22, Mr. Janczyk was transferred to the service department from his job as a floater on the Orion II line, after management heard rumours that he was involved in Union activities. Mr. Sheardown testified that Mr. Janczyk was transferred because "the problem did not settle down on the line he worked on, and not only was there a problem as far as employee safety goes, but there was no work being done".

69. After Mr. Janczyk arrived in the service department, Mr. Leether told him not to talk about the Union or stand around in a group talking to other employees. He also told him repeatedly during his first month in the service department that he was not allowed to go over to the plant at any time, nor to make or receive any personal telephone calls. Neither Mr. Janczyk nor any of the other grievors suffered any reduction in wages or loss of benefits as a result of their transfers.

70. Later that day, Mr. Sheardown came to the service department and addressed all of the employees in that department. He told them that Mr. Janczyk had been transferred there for his own protection. He asked them not to sign Union cards on Company property, and also asked them to cooperate and get along in working together. After this, Mr. Janczyk saw Mr. Sheardown in the service department from time to time. There was nothing out of the ordinary about this as he was accustomed to seeing Mr. Sheardown in the plant. He acknowledged (in cross-examination) that Mr. Sheardown had always been a visible and conspicuous individual who appeared to take a personal interest in everything that was going on. He also told the Board that Mr. Sheardown did not treat him any differently after his transfer than he had prior to the organizing drive.

71. Mr. Janczyk also testified that the working environment in the service department was much better than that in the plant. He noted that it was cleaner, and that there were not a lot of air lines and other things lying around on the floor as there were in the plant. He further indicated that the service department does not have the pressure and tension created by the plant's production schedules. Thus, Mr. Janczyk told the Board that, although he still has some differences to work out with Mr. Leether (who from time to time yells loudly at employees whom he feels have done something wrong), he prefers working in the service department rather than the plant.

72. On or about April 28, Messrs. Yussuff and Grant were handing out leaflets to employees as they entered the Company parking lot prior to work. Mr. Sheardown walked up to them and told them not to disrupt the traffic flow because it might cause an accident. After they assured him that they were not blocking traffic, Mr. Sheardown stood right beside them and stared intently at the employees in an intimidating manner. During the five or ten minutes that Mr. Sheardown was there, approximately fifty employees entered the parking lot in cars, but only about five or six of them stopped and accepted leaflets. When a leaflet was offered to two employees who came by on foot, Mr. Sheardown called one of them by name and indicated that he should not take it. The employees then walked in without taking a leaflet. Mr. Sheardown left about five minutes later, after instructing two foremen to stay at the gate to ensure that the employees had access to the parking lot without obstruction.

73. Later that day, Mr. Leether asked Mr. Galeota if he was going to attend the Union meeting which was to be held after work that afternoon. When Mr. Galeota indicated that he was not sure, Mr. Leether told him that he should "think about it" because he was an excellent worker who "still had a chance" with the Company.

74. On Friday April 29, Mr. Sheardown gave Mr. Pietras a sixty-day suspension for lying about what had happened to Mr. Trajkovic. The letter which Mr. Pietras received from Mr. Sheardown concerning that suspension reads:

WITNESS TO ALLEGED THROWING OF PARTIAL TUBE OF BEES WAX ON APRIL 20, 1988:

After investigating the alleged incident whereby you stated to myself, Employee Rep Jeff King, Bryan Cox, John Leether and Detective Ivan Strong that you witnessed an object (you stated it to be bees wax) strike Michael Trajkovic on the head at a time when you and he were in the stock room obtaining parts. [sic]

The investigation by the Management of Ontario Bus and the Peel Regional Police have shown that the statement made by you is a complete fabrication.

This act by you, in an attempt to embarrass the company in concert with Mike Trajkovic has created a severe disruption in our plant, causing hugh [sic] labour hour losses and turmoils amongst our employees.

Effective May 2, 1988, you are hereby suspended for a 60 day period, with a further six month probationary period on your return to work.

Your medical benefits are also suspended for the 60 day suspension period.

You will report to my office on July 5, 1988 to be informed of your duties.

I ask for your full cooperation.

75. When Mr. Pietras returned from that suspension, he was assigned a difficult job on July 5, but was given a better job the next day. However, when he asked if he could return to his former job in the air system assembly area, Mr. Sheardown said no. Mr. Pietras then told Mr. Sheardown that if he could not return to that job he would no longer work for the Company. When Mr. Sheardown remained unyielding, Mr. Pietras quit his employment with the Company.

76. On April 22, Mr. Valencia was transferred to the service department from the Orion II line where he had worked for the previous six months as a line mechanic. Mr. Sheardown told the Board that the reason for the transfer was that "problems were still developing on the Orion II line, and in the section where Oscar Valencia worked little or no work was being done". He also testified that Mr. Valencia and the other grievors who were transferred "were all transferred because of the disruption and the threats of physical violence", and because he felt that he had responsibility to do what was necessary to protect all of the employees. Mr. Valencia was also told by management that he could not use the telephone or speak with other employees in a group. He was assigned various tasks in the service department but spent most of his time outside the building, cleaning the interiors and exteriors of buses which had been serviced, to prepare them for return to their owners. Mr. Valencia was of the opinion that Mr. Leether was acting discriminatorily in assigning him that work. However, we accept Mr. Leether's evidence that he assigned that work to Mr. Valencia because the employee who normally performed that work had just left the Company, and because Mr. Valencia had proved to be incapable of performing other types of service work due to his limited skills.



77. As indicated above, Mr. Sheardown came over to the service department several times each week to observe the department's operations. On these visits he often watched Mr. Valencia from a short distance away without saying anything to him. Mr. Valencia was of the opinion that Mr. Sheardown did this in an attempt to make him nervous and thereby cause him to do something wrong so that Mr. Sheardown would have an excuse to take disciplinary action against him. However, we accept Mr. Sheardown's evidence that he was merely observing Mr. Valencia's work activities in the same manner that he observed other employees, and that he did not speak to him because the section 89 complaint (in File No. 0533-88-U) which the Union filed with the Board on May 27, 1988 led him to conclude that anything which he said might be misconstrued and used against him.

78. In early May, Mr. Valencia was given an oral warning by Mr. Leether for leaving Company property during working hours without advising Mr. Leether of his whereabouts. During July, Mr. Leether gave Mr. Valencia written warnings for "ongoing ineffective use of Company time", and for driving a bus in a careless manner. It is unnecessary to detail the evidence adduced concerning those incidents. It is sufficient for purposes of this decision to indicate that we are satisfied on the totality of the evidence that those written warnings were given to Mr. Valencia for misconduct on his part, and not because of his role as a Union organizer. The same is true of the aforementioned oral warning.

79. On a warm day in August, Mr. Sheardown rebuked Mr. Valencia for wearing only "short shorts" while working, and instructed him to put on the coveralls provided by the Company for reasons of safety and appearance. About two days later, Mr. Sheardown gave Mr. Valencia another oral warning when he found him working on a bus with no shirt on, and with the top of his coveralls pulled down and wrapped around his waist. Although in giving his evidence Mr. Valencia expressed the opinion that the Company was discriminating against him in this regard, the evidence does not support that conclusion. In this regard, we note that Mr. Janczyk's evidence confirms that Mr. Leether told all of the employees in the service department that because of safety concerns it was not permissible for them to work in shorts with no coveralls or with their coveralls wrapped around their waist.

80. On August 15 Mr. Sheardown stepped onto a bus on which Mr. Valencia was working and stood watching him for a few minutes without speaking. When Mr. Valencia finished his cleaning work, he gathered up his equipment and left the bus with Mr. Sheardown walking ahead of him. It was Mr. Valencia's evidence that as he stepped out of the bus, a cleaning rag fell out of his pocket. He further testified that when he bent down to pick it up with his right hand, the handle of the broom which he had been carrying in his other hand fell forward and came down close to Mr. Sheardown but did not touch him. Mr. Sheardown, on the other hand, testified that after he stepped off the bus and walked ten or fifteen feet toward the service department building, he was struck on the head by a broom handle in a manner which involved the same feeling and pain as getting hit on the head with a hockey stick. Mr. Sheardown immediately turned around and found Mr. Valencia about three feet behind him. When Mr. Sheardown asked, "Do you know what you have just done?", Mr. Valencia replied, "It was an accident". After Mr. Sheardown retorted, "It is no accident when I get hit in the head with a broom handle", Mr. Valencia denied that the broom handle had struck him. The two of them then entered the building and approached Mr. Leether. While Mr. Sheardown went to get an employee representative, Mr. Leether asked Mr. Valencia what had happened. Mr. Valencia said that the broom had accidentally hit Mr. Sheardown. However, when Mr. Sheardown returned a few minutes later with an employee representative and the four of them went into Mr. Leether's office to discuss the matter, Mr. Valencia denied that the broom handle had struck Mr. Sheardown, and stated that it had merely fallen close to him. Mr. Valencia was then suspended for three days pending investigation, in accordance with the

Company's standard policy respecting discipline. Under that policy which is designed to ensure that disciplinary action is not taken precipitately, an employee is sent home for three days while management investigates the situation and determines whether disciplinary action is warranted. If management decides not to discipline the employee, or merely to issue a written warning, the employee is paid for that period.

81. After Mr. Valencia left the premises, Mr. Leether told Mr. Sheardown about what Mr. Valencia had said concerning the incident in Mr. Sheardown's absence. The inconsistency between what he had told Mr. Leether and what he had told Mr. Sheardown further confirmed Mr. Sheardown's opinion that Mr. Valencia was not being truthful about the incident. After further considering the matter, Mr. Sheardown decided to discharge Mr. Valencia. In explaining that decision, Mr. Sheardown told the Board, "During the three-day period I reviewed the matter and felt that, even though there was a Union organizing person involved, it is clearly stated in our policy that if anyone is struck with an instrument or physically abused it's an automatic termination. It was my opinion that if someone struck the President we have no alternative but to terminate that employee." He also told the Board that he did not believe that the incident was accidental.

82. Having carefully considered all of the evidence adduced before us concerning that incident, we have concluded that Mr. Valencia intentionally struck Mr. Sheardown on the head with his broom handle. His motivation for doing so is unclear, although he may have acted as he did as a result of his annoyance with Mr. Sheardown's practice of observing his work without speaking to him. As noted above, after denying Mr. Sheardown's assertion that the broom handle had struck him, Mr. Valencia admitted to Mr. Leether that it had struck Mr. Sheardown, but then resurrected his earlier story when Mr. Sheardown returned with an employee representative. We find Mr. Valencia's evidence regarding this incident to be neither candid nor credible. If Mr. Valencia had in fact bent down in the manner which he described in his evidence before the Board, the broom handle would neither have struck Mr. Sheardown nor fallen close to him, as he would have been well out of its range by the time it fell. Although Mr. Sheardown's hockey stick analogy may involve an element of exaggeration, we found his evidence concerning the incident to be more reliable than that of Mr. Valencia. Furthermore, we are satisfied on the totality of the evidence that Mr. Sheardown honestly (and not unreasonably) believed that Mr. Valencia intentionally struck him on the head with his broom handle, and that Mr. Sheardown acted on the basis of that belief in deciding to discharge Mr. Valencia. We are also satisfied that anti-union animus played no part in Mr. Sheardown's decision to discharge Mr. Valencia for that incident.

83. As indicated above, we have determined that some of the Union's allegations against the respondent are unfounded. However, having carefully considered all of the evidence and the submissions of counsel, we have concluded that the respondent did contravene the Act in a number of ways.

84. Management's interrogation of employees including Messrs. Galeota and Valencia concerning their support for the Union and their organizing activities constituted a clear violation by the respondent of section 64 of the Act, which prohibits an employer, or a person acting on behalf of an employer, from interfering with the formation, selection, or administration of a trade union. (See *J. Pascal Inc.*, [1985] OLRB Rep. July 1075; *Charterways Transportation Limited*, [1982] OLRB Rep. April 552; and *Ex-Cell-O Wildex*, [1977] OLRB Rep. June 370.) The same is true of Mr. Leether's suggestion (made in the context of a discussion about Mr. Galeota's uncertainty about whether or not to attend the Union meeting that afternoon) that Mr. Galeota should "think about it" because he was an excellent worker who "still had a chance with the Company".

85. The respondent contravened section 64 by prohibiting the grievors from engaging in

union solicitation on Company property, and also contravened section 66 by giving them written warnings concerning such activities. In *Wilco Canada Inc.*, [1983] OLRB Rep. June 989, the Board wrote, in part, as follows:

18. A useful review of the Board's approach to such "no-solicitation" and "no distribution" rules is contained in the Board's recent decision in *The Adams Mine, Cliffs of Canada Ltd., Manager*, [1982] OLRB Rep. Dec. 1767, at paragraphs 15 to 22. In that decision the Board analysed the pertinent Canadian and American jurisprudence, as well as the applicable provisions of the *Labour Relations Act*, including section 71 which provides:

"Nothing in this Act authorizes any person to attempt at the place at which an employee works to persuade him during his working hours to become or refrain from becoming or continuing to be a member of a trade union."

On the basis of that analysis, the Board arrived at the following general principles:

"(a) No-solicitation or no-distribution rules which prohibit union solicitation on company property by employees during their non-working time are presumptively an unreasonable impediment to self-organization and are therefore invalid; however, such rules may be validated by evidence that special circumstances make the rule necessary in order to maintain production or discipline;

(b) No-solicitation or no-distribution rules which prohibit union solicitation by employees during working time are presumptively valid as to their promulgation, in the absence of evidence that the rule was adopted for a discriminatory purpose or applied unfairly; and no-solicitation or no-distribution rules which prohibit union solicitation by non-employee union organizers at any time on the employer's property are valid in the absence of an application for a direction pursuant to section 11."

See also *International Chinese Restaurant*, [1977] OLRB Rep. Oct. 681; *Renfrew County Roman Catholic Separate School Board*, [1970] OLRB Rep. Feb. 1381; *Audio Transformer Limited*, [1969] OLRB Rep. Nov. 994; *Indalprime Limited*, [1969] OLRB Rep. Aug. 652; *The Talisman Motor Inn*, [1968] OLRB Rep. Apr. 80; *Data Business Forms Limited*, [1966] OLRB Rep. Dec. 714; *McNair Products Company Limited*, [1966] OLRB Rep. Oct. 518; *Norfish Limited*, [1965] OLRB June 226; *Barbara Jarvis and Associated Medical Services Limited*, [1961] OLRB Rep. June 973; and *Cominco Ltd.*, [1981] Can. LRBR 499 (B.C.L.R.B.)

In the instant case, if a prohibition against solicitation had been applied uniformly to employees opposed to the Union as well as to those in favour of it, the danger of violence over the issue of unionization might have overcome the presumptive unreasonableness of such a prohibition of solicitation on Company property by employees during their non-working time. However, it is evident that in the instant case the prohibition was only applied and enforced in respect of pro-union solicitation. The evidence indicates that the respondent not only permitted petitions against the Union to be circulated on Company premises during working hours, but also shut down the plant for most of the afternoon on April 19 to permit employee representatives known to be opposed to the Union to hold meetings with employees. The respondent also permitted Mr. Pereira, who was known to be firmly opposed to unionization of the plant, to call Portuguese speaking employees into his foreman's office during working hours to apprise them of all the benefits the Company provided to them, and to express the view that they did not need a union. Thus, it is clear that the solicitation prohibition was imposed on the grievors for a discriminatory purpose, and that it was applied unfairly. Consequently, in this case not only has the presumption referred to in the first principle quoted above been rebutted, but also the presumption regarding the validity of a prohibition of solicitation by employees during working time (referred to in principal "(b)" quoted above).

86. Although the impugned transfers fall closer to the line, we have decided on balance that



the respondent also contravened sections 64 and 66 of the Act when it isolated the grievors by transferring them out of their regular jobs after becoming aware of their Union activities. The possibility of violence in the plant, the existence of more favourable working conditions in the service department, and the maintenance of the transferred employees' wages and benefits made the transfers a less egregious violation than that which occurs in instances where an employer transfers a known union supporter to an undesirable or less remunerative position, or to a position more susceptible to lay-offs. Nevertheless, we are satisfied on the totality of the evidence that at least one of the purposes and effects of the transfers was to isolate the grievors and thereby weaken the organizing drive by making it more difficult for them to promote the Union among their fellow employees. Moreover, we are not persuaded that any countervailing considerations warranted this interference with the organizing drive in the circumstances of this case.

87. The discriminatory restrictions in respect of telephone calls, discussions with other employees, and access to the plant, which the respondent placed on the grievors who were transferred to the service department were also violative of sections 64 and 66, as were the analogous restrictions placed on Mr. Sousa and the very close supervision under which Mr. Chioconi was placed for two or three weeks after his transfer to the electrical room.

88. In considering the legality of Mr. Sheardown's comments at the April 18 general meeting of employees, we note that section 64 of the Act expressly preserves the employer's "freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence". In commenting on the effect of that statutory language, the Board wrote as follows in *J. Pascal Inc.*, [1985] OLRB July 1075, in paragraph 21:

... The Act does not require that an employer stay neutral during a union organizing campaign. To the contrary, section 64 expressly states that nothing in the section "shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, threats, promises or undue influence". Where the difficulty arises is in trying to draw the line at which an expression of views by an employer becomes "coercion, threats, promises or undue influence", which are prohibited by the section. As noted in the *Dylex Limited* case, [1977] OLRB Rep. June 357, in seeking to establish where the line lies, the Board starts with the presumption that employees recognize that employers are generally not in favour of having to deal with employees through a trade union, and that, therefore, it ought not to surprise them if their employer indicates that he would prefer it if they did not support the union. On the other hand, however, the Board is also aware that an employee may be particularly vulnerable to employer influences. An employer cannot, when expressing his views, make statements that may be reasonably construed by employees to be an attempt by means of coercion, intimidation, threats, promises or undue influence to interfere with their freedom to join and support a trade union of their choice.

As indicated in paragraph 15 of this decision, we have concluded on the balance of probabilities that Mr. Sheardown did not say that the Company would not survive with a union, that he never wanted to own a company which had a union, that the Union would destroy the Company, or that if employees were offered Union cards they should throw them in the garbage. Having carefully considered what the evidence establishes that Mr. Sheardown did say at the meeting (as described in paragraphs 14 and 16), we have concluded that all of his comments fall within the purview of the employer's freedom of speech under section 64.

89. As indicated above, the evidence does not support the Union's contention that the respondent contravened the Act by discharging Messrs. Trajkovic and Valencia. The same is true of Mr. Pietras's suspension (and the other disciplinary action imposed upon him, with the exception of the written warning which he received in respect of engaging in union solicitation). The Company's investigation of Mr. Trajkovic's allegations led management to conclude, not unreasonably, that in an attempt to embarrass the Company during the organizing drive, Mr. Pietras

## MONTHLY HIGHLIGHTS

January 1990

Editor: Percy Toop, Acting Solicitor

The following are scope-notes of some of the decisions issued by the Ontario Labour Relations Board which will appear in the December Report:

Accreditation - Board able to define unit of employers and satisfy double majority test whether or not two of employers included - Accreditation would not be delayed while Board resolves issues which do not affect unit disposition - Accreditation orders issuing

METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION; RE U.O.E., LOCAL 793; RE ONTARIO CONCRETE AND DRAIN CONTRACTORS ASSOCIATION; RE L.I.U.N.A., LOCAL 183; RE TEAMSTERS' UNION, LOCAL UNION NO. 1; RE METROPOLITAN TORONTO ROAD BUILDERS ASSOCIATION; RE CANADIAN AUTOMATIC SPRINKLER ASSOCIATION; RE U.A., LOCAL 46; RE ONTARIO PIPE FITTERS COUNCIL OF U.A.; RE U.A., LOCAL 853; RE METROPOLITAN TORONTO PLUMBING BUILDERS ASSOCIATION; RE TORONTO CONSTRUCTION ASSOCIATION, GENERAL CONTRACTORS SECTION; RE SARNIA CONSTRUCTION ASSOCIATION; RE CONSTRUCTION ASSOCIATION OF THUNDER BAY; RE SUDBURY CONSTRUCTION ASSOCIATION; RE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION; RE THE RESIDENTIAL FORMERS FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY; RE THE HEAVY CONSTRUCTION ASSOCIATION OF TORONTO; RE TORONTO BUILDING LABOUR BUREAU; File Nos. 1533-88-R, 1534-88-R, 1535-88-R; Dated December 19, 1989; Panel: N.B. Satterfield, W. Gibson, H. Kobryn (34 pages)

Bargaining Unit - Certification - Construction Industry - Union seeking to carve out craft unit of concrete form workers from broader existing unit - Board reviewing jurisprudence on displacement applications in construction industry - Board following general practice of allowing unit to carve out in construction industry and having description of unit portion of bargaining unit mirror ICI portion

ERWALL FORMING (EAST) LTD.; RE C.J.A., LOCAL 27; RE THE FORM WORK COUNCIL OF ONTARIO; RE AUTOMATIC STRUCTURES LTD.; File Nos. 3168-88-R, 3169-88-R, 0241-89-U; Dated December 6, 1989; Panel: G.T. Surdykowski, J. Bear (dissenting), S. Weslak (35 pages)

signed Union cards represent a core of support for the Union adequate for purposes of collective bargaining.

- 2 -

Bargaining Unit - Certification - Employer requesting twenty hour cut-off for full-time unit to reflect workplace distinction between permanent and casual employees - Union requesting twenty-four hour cut-off and citing reliance during organizing on Board's twenty-four hour "rule" - Board of fettering discretion in taking into account labour relations community of interest in consistency and predictability - Board considering reliance on interests, right of self-organization, potential for gerrymandering, lack of agreement between parties - Terms of employment often unilaterally imposed by employer and may not be reliable indicators of community of interest - Effect of employer's request disenfranchisement of casual employees - Standard division not causing serious labour relations problems - Facts not sufficiently exceptional to warrant departure from normal practice

VAUGHAN PUBLIC LIBRARIES; RE C.U.P.E.; File No. 1079-89-R; Dated December 22, 1989; Panel: K.G. O'Neil, W.A. Correll, E.G. Theobald (16 pages)

Bargaining Unit - Certification - Union seeking to represent group of drivers owning neither car nor plate - Employer arguing unit of independent contractors more appropriate - Board affirming more than one unit may be appropriate - Unit proposed by union having distinct community of interest - "Pure driver" units recognized elsewhere and not causing serious bargaining problems or prejudice to public interest - Board accepting unit proposed by union

U-NEED-A-CAB LIMITED; RE R.W.D.S.U., AFL-CIO:CLC;; RE 751341 ONTARIO D. OPERATING AS M & M HOLDINGS, AND M & M AUTO CENTRE SOUTH END CAB I. File No. 3052-88-R; Dated December 14, 1989; Panel: R.O. MacDowall, R.W. Pirrie, P.V. Grasso (15 pages)

Charter of Rights - Judicial Review - Interference in Trade Unions - Mall owner appealing Divisional Court decision (reported at (1988) 62 O.R. 2d 337) upholding Board decisions (reported as T. Eaton Company Limited [1985] OLRB Rep. June 941 and Nov. 1683) - Board found mall owner to have committed unfair labour practice by acting on behalf of employee to enforce no solicitation policy without reasonable business justification - Mall owner arguing Board exceeded jurisdiction by infringing on property rights and by finding mall owner acted on behalf of employer - Board acting within statutory authority and not exercising powers in a manifestly unreasonable manner - Appeal dismissed

Company's investigation of Mr. Trajkovic's allegations led management to conclude, not unreasonably, that in an attempt to embarrass the Company during the organizing drive, Mr. Pietras



- 3 -

DILLAC FAIRVIEW CORPORATION LIMITED AND T.E.C. LEASHOLDS LIMITED; RE V.D.S.U., AFL-CIO-CLC, T. EATON COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD; Board File No. 0861-84-U, (Court File No. 112/88); Dated September 6, 1989; Panel: Robins, Tarnopolsky JJ.A., Osler J. (Ad Hoc) (7 pages)

Right of Fair Representation - Complainant winning promotion competition - Union supporting grievance of unsuccessful candidate - Complainant alleging union breached duty by failing to represent her at arbitration - Board reviewing content of duty - Where union properly supports interest of one bargaining unit member consistent with proper application and administration of collective agreement, union not also required to represent opposing interest - Union not guarantor of every aggrieved employee - Complaint dismissed

AKAR, MARIA; RE C.U.P.E., LOCAL 79; RE THE MUNICIPALITY OF METROPOLITAN TORONTO; File No. 0503-89-U; Dated November 27, 1989; Panel: M.A. Nairn (18 pages)

Employee reference - Union requesting determination of bargaining unit status of head secretaries - Certificate issued on basis of agreement including head secretaries - Agreement reserving right of union to raise consideration of their inclusion in the bargaining unit" - Board interpreting agreement to mean parties contemplated extension of bargaining rights by voluntary recognition at bargaining table - Board determination confined to employee-not bargaining unit-status - Board did not entertain application to determine employee status of individuals clearly excluded from bargaining rights where application not to assist in voluntary recognition

BOARD OF EDUCATION FOR THE CITY OF ETOBICOKE; RE C.U.P.E.; File No. 06-88-M; Dated December 21, 1989; Panel: Owen V. Gray, W.A. Correll, R. Montague (18 pages)

Compellence - Health and Safety - Witness - Complainant calling Ministry of Health and safety inspector as witness - Director authorizing inspector to testify - Occupational Health and Safety Act providing inspector not compellable witness - Non-compellability waived - Inspector competent to testify

signed Union cards represent a core or support for the Union adequate for purposes of collective bargaining.

11

th  
tr:  
sil  
de  
tr:  
a  
su  
or  
or  
er  
in  
87  
er  
fe  
re  
pl

- 4 -

BOEING CANADA/DEHAVILLAND DIVISION; RE JILL BETTES; File No. 1761-88  
Dated December 11, 1989; Panel: S.A. Tacon, J.A. Ronson, D.A. Patte  
(28 pages)

Intimidation and Coercion - Reconsideration - Remedies - Complaint  
requesting reconsideration on ground Board failed to make decision on  
merits - Board not required to decide on merits where lack of appropriate  
remedy makes issue moot - Board having discretion to inquire into section  
89 complaint - Application dismissed

CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.; File  
2382-88-U; Dated December 6, 1989; Panel: Owen V. Gray, W.A. Corrigan,  
C. McDonald (5 pages)

Practice and Procedure - Witness - Party calling witness responsible for  
providing Board with correct name and address for arrest warrant

REAL CARPENTERS; RE C.J.A., LOCAL 27; File No. 2014-88-G; Dated December  
4, 1989; Panel: R.A. Furness, D.A. MacDonald, J. Redshaw (2 pages)

\*\*\*\*\*

The decisions listed in this bulletin will be included in the  
publication, Ontario Labour Relations Board Reports. Copies of advance  
drafts of the OLRB Reports are available for reference at the Board  
Library.

#### Announcements

Michael Eayrs has been appointed to the Canada Labour Relations Board.

A  
tl  
v  
il  
c  
il  
e  
8  
r  
c  
t

Company's investigation of Mr. Trajkovic's allegations led management to conclude, not unrea-  
sonably, that in an attempt to embarrass the Company during the organizing drive, Mr. Pietras

falsely stated that he witnessed an object strike Mr. Trajkovic on the head in the stockroom. We are also satisfied that the imposition of a sixty-day suspension was consistent with the Company's policy of suspending employees for extended periods of time for misconduct which it judged to be serious, as exemplified by the ninety-day suspension that was imposed on Mr. Pereira for his part in an altercation with Mr. Trajkovic in 1987. We also find no merit in the Union's contention that Mr. Pietras was effectively forced by the respondent to quit his employment. Had he been left on the difficult job to which he was assigned on the day he returned from his suspension, that contention might be somewhat more tenable. However, on the following day he was given a better job, but nevertheless elected to quit when the Company declined to return him to his former job in the air system assembly area. The evidence adduced before us falls far short of establishing that the respondent constructively discharged Mr. Pietras. Accordingly, there is no legitimate basis for directing the respondent to rehire him.

90. The respondent did, however, contravene section 64 through the actions of its foremen who positioned themselves in the hallway near the Union meeting room at the Ramada Inn on April 20 around the time the meeting was scheduled to commence. In the absence of any testimony from those foremen to explain their presence, it is reasonable to infer that they gathered there either to discourage employees from attending the meeting or to ascertain which employees were in attendance. However, the gravity of that contravention is somewhat diminished by the fact that their presence does not appear to have deterred employees from attending the meeting, and by the fact that they left the area as soon as Mr. Yussuff told them that the meeting was for employees only and that they were not welcome there.

91. The respondent contravened sections 64 and 70 of the Act on or about April 28 by interfering with the Union's leafletting activities. While there was nothing wrong with Mr. Sheardown attending at the plant gate to ensure that the C.A.W. representatives were not disrupting the traffic flow into the Company parking lot, he exceeded the bounds of propriety by staring intently at the incoming employees in an intimidating manner, and by indicating to one of the employees that he should not take the leaflet which was being offered to him by a C.A.W. representative.

92. The Union seeks to be certified under section 8 of the Act, which provides:

8. Where an employer or employers' organization contravenes this Act so that the true wishes of the employees of the employer or of a member of the employers' organization are not likely to be ascertained, and, in the opinion of the Board, a trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board pursuant to section 6 to be appropriate for collective bargaining, the Board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit.

93. In support of his client's application for certification under section 8 of the Act, Union counsel contends that the respondent's interference was so quick and massive in this case that it essentially stopped the Union's organizing drive. He notes that when Mr. Sheardown was advised on the morning of April 18 that some employees were attempting to unionize the plant, he immediately interrogated the alleged organizers. Counsel further contends that within a few hours of receiving that information, Mr. Sheardown called a general meeting of employees to foment discord in order to defeat the Union. Union counsel also argues that the respondent abandoned production and permitted employees to go on a rampage against the Union, after muzzling the Union organizers by disciplining and transferring them to isolated areas. He urges the Board to consider the cumulative effect of the respondent's acts and omissions, and to find that the 67 employees who signed Union cards represent a core of support for the Union adequate for purposes of collective bargaining.



94. Counsel for the respondent argues that the Board should dismiss the application for certification under section 8. It is his contention that Mr. Sheardown did not say or do anything which contravened the Act. He further argues, in the alternative, that if there have been any contraventions of the Act, they are minor in nature and not of the type which warrant certification under section 8. It is also the respondent's position that the Union does not have support adequate for the purposes of collective bargaining, and that it would be an injustice for the Board to foist the Union on the respondent's employees because, it is submitted, a vast majority of them do not want to be represented by it.

95. In *DI-AL Construction Limited*, [1983] OLRB Rep. March 356, the Board made the following comments (in paragraph 5) regarding the purposes and requirements of section 8:

...certification pursuant to the provisions of section 8 of the Act was designed as both a deterrent to illegal employer interference in union organizational campaigns, as well as a device to provide a meaningful and effective remedy in those areas where an employer's interference has operated to destroy the free selection process guaranteed by section 3 of the Act. The wording of the section makes clear that certification under section 8 can only be granted if three conditions are satisfied, namely:

- (i) The Act has been violated.
- (ii) The true wishes of employees are not likely to be ascertained in a representation vote, or otherwise.
- (iii) In the opinion of the Board, the applicant has membership support adequate for the purposes of collective bargaining.

See also *J. Sousa Contractor Limited*, [1988] OLRB Rep. Oct. 1027; *Zenith Wood Turners Inc.*, [1987] OLRB Rep. Nov. 1443; *Cambridge Canadian Foods Inc.*, [1987] OLRB Rep. March 319; *General Metal Products of Windsor Limited*, [1985] OLRB Rep. Nov. 1596; *Toronto Fabricating Co.*, [1985] OLRB Rep. Oct. 1528; *Primo Importing and Distributing Co. Ltd.*, [1983] OLRB June 959; *Trulite Industries Limited*, [1983] OLRB Rep. May 821; *Robin Hood Multi-Foods Inc.*, [1981] OLRB Rep. July 972; *K-Mart Canada Limited (Peterborough)*, [1981] OLRB Rep. Jan. 60; *Skyline Hotels Limited*, [1980] OLRB Rep. Dec. 1811; and *Radio Shack*, [1979] OLRB Rep. March 248.

96. As indicated above, the respondent has contravened sections 64, 66, and 70 of the Act. Thus, the first condition necessary for certification under section 8 has been satisfied. It remains for us to consider whether the true wishes of the employees are not likely to be ascertained, and whether the applicant has membership support adequate for the purposes of collective bargaining. In making the latter determination, the Board generally takes into account a number of factors. See, for example, *Manor Cleaners Limited*, [1982] OLRB Rep. Dec. 1848, at paragraph 21:

The issue of whether membership strength is adequate under section 8 has been found by the Board in prior cases not to be simply a question of numbers or percentages. In *Viceroy Construction Company Limited*, [1977] OLRB Rep. Sept. 562, the Board stated at paragraph 22:

No arbitrary percentage can be arrived at that will apply in all cases. The Act requires the Board to determine what is adequate membership support by the light of its opinion depending on the facts of each case. In forming its opinion in any case the Board must have regard for all the circumstances.

Some of the circumstances or factors which have been considered by the Board in assessing "adequacy" are:

- (1) the stage of the union's campaign at which the employer conduct occurred

(*Skyline Hotel Limited*, supra; *District of Algoma Home for the Aged (Algoma Manor)*, supra);

- (2) the circumstances surrounding the cards signed prior to the employer interference and the number of cards signed *Lorain Products*, [1977] OLRB Rep. Nov. 734);
- (3) the existence of a full-time unit which showed membership sufficient to support collective bargaining by its part-time counterpart (*Robin Hood Multifoods*, [1981] OLRB Rep. July 972; *Windsor Limousine Limited*, [1981] OLRB Rep. Mar. 398);
- (4) the severity of the employer conduct insofar as it related to the number of cards signed - "the chilling effect" (*K-Mart*, [1981] OLRB Rep. Jan. 60);
- (5) the percentage of unit signing the cards where support for the union is at an extremely low level (5%) (*Sommerville Belkin*, supra).

In assessing adequacy the Board must engage in some measure of speculation regarding the union's prospects of successfully engaging in the sequel to certification, collective bargaining. If the union can and has mustered the totality of its support in the bargaining unit certification under section 8 should not be used to foist union representation on those employees who would not have chosen this freely for themselves. The assessment must be taken with care (see *Skyline*, supra, at paragraph 62).

97. In the instant case, the respondent engaged in a number of unfair labour practices early in the Union's organizing campaign. Mr. Galeota first contacted the Union on or about April 7, 1988. The first meeting of Union officials and a small group of employees interested in organizing the respondent took place on the evening of Friday April 15. Twelve cards (plus one lost card) were signed over the next two days as a result of contacts which Mr. Sousa made with Company employees during that weekend. A few more were signed before work on Monday morning (April 18). The respondent's first contravention of the Act occurred when Mr. Sheardown interrogated Mr. Galeota (and two other employees) about the Union that morning. However, the organizers continued to sign up employees during the balance of the shift and after work. A total of twenty-six cards, (including one lost card) were signed that day, with most of them being signed after that contravention of the Act had occurred. Although the transfer of Messrs. Galeota and Chioconi to the service department, and the transfer of Mr. Trajkovic to the air system assembly area, gave them less opportunity to contact employees concerning the Union, twelve more cards (plus one more lost card) were signed over the next two days. It was not until after an overwhelming majority of the employees who attended the April 20 Union meeting rejected the Union by leaving the meeting en masse that the organizing drive really lost momentum. Although some of the respondent's unfair labour practices made it easier for opponents of unionization to vocalize their opposition, we are satisfied on the totality of the evidence that many of the respondent's employees were firmly opposed to unionization from the outset of the organizing campaign and that it was primarily their intransigence, rather than the respondent's contraventions of the Act, which caused the organizing campaign's lack of success. This was not a case in which the employer discharged organizers in contravention of the Act, or engaged in other unfair labour practices which cannot be remedied under section 89 in such a manner as will assure the employees that they are protected by the rule of law and that they are free to join a trade union and participate in its lawful activities, or to refrain from doing so. Nor is it a case in which the employer created or suggested the formation of an employee representatives committee to thwart the organizing drive. A committee of representatives elected by employees had been in place long before the organizing campaign, and had met regularly with members of management to discuss and resolve employee concerns. In the instant case, most of the initiative for employee opposition to the Union came not from management but from those representatives who, along with many other employees, were angered by the fact that a

handful of employees had taken it upon themselves to contact the Union without first discussing the matter with their elected employee representatives or their fellow employees. Having regard to all of the circumstances, we are of the opinion that the respondent's contraventions of the Act have not created a situation in which the true wishes of the employees are not likely to be ascertained. Since that prerequisite for certification under section 8 has not been satisfied, it is unnecessary to determine whether or not the Union has membership support adequate for the purposes of collective bargaining in the circumstances of this case.

98. For the foregoing reasons, the Union's application for certification under section 8 is hereby dismissed. However, this is an appropriate case in which to grant a variety of relief under section 89 in order to remedy the respondent's unfair labour practices, and assure the Union and all of the respondent's employees that their rights and freedoms under the *Labour Relations Act* will be duly respected by the respondent. In addition to a declaration and a cease and desist order, a posting in English and Portuguese is appropriate to remedy any adverse psychological impact the respondent's contraventions of the Act may have had on employees, and to assure them that they are free to exercise, or to refrain from exercising, their rights under the Act (see, generally, *Holiday Juice Ltd.*, [1984] OLRB Rep. Oct. 1449, and *Valdi Inc.*, [1980] OLRB Rep. Aug. 1254).

99. The written warnings which were unlawfully given to the grievors in respect of union solicitation on Company property are to be rescinded and removed from their employment records. No relief other than a declaration is sought by the Union in respect of the transfers, as those grievors who remain in the employ of the respondent are content to remain in the positions to which they were transferred.

100. To provide the Union with the information necessary to enable it to contact the respondent's employees, thereby offsetting any advantage which employees opposed to the Union may have gained as a result of the opportunities which the Company's unfair labour practices gave them to express their point of view to other employees, the respondent will be required to provide the Union with a list of names and addresses of all of its employees (other than those excluded from the bargaining unit), and to keep the list updated on a monthly basis for a period of six months.

101. The Union's request for costs is denied. As noted by the Board in *Gerald Lecuyer*, [1987] OLRB Rep. Apr. 529, at paragraph 32, "[t]his Board has repeatedly said that if it does have the power to award costs to a successful complainant, it would be inappropriate to exercise that power where there is no corresponding power to award costs against an unsuccessful complainant." See also *Luciano D'Alessandro*, [1987] OLRB Rep. July 986, and the decisions cited therein. None of the other relief requested by the Union is warranted in the circumstances of this case.

102. For the foregoing reasons, the Board hereby declares that the respondent has contravened sections 64, 66, and 70 of the *Labour Relations Act*, and orders that the respondent:

- (1) cease and desist from interrogating employees concerning their support for the Union and their organizing activities; prohibiting employees from engaging in union solicitation on Company property, or on Company time while concurrently permitting employees to engage in activities in opposition to the Union on Company time; isolating Union organizers by transferring them out of their regular jobs and treating them in a discriminatory manner following their transfers; and otherwise interfering with the employees' selection of a trade union;
- (2) post copies of the appended notices in English and Portuguese, after being duly signed by Mr. Sheardown, in conspicuous places on its premises where they are likely to come to the attention of employees; keep the notices posted for sixty consecutive working days; take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other materials; and give to a representative of the Union



reasonable physical access to the premises so that the Union can satisfy itself that this posting requirement is being complied with;

- (3) rescind the grievors' written warnings in respect of union solicitation on Company property, and remove them from their employment records; and
- (4) provide the Union with a list of names and addresses of all Company employees, other than those excluded from the bargaining unit, and keep the list updated on a monthly basis for a period of six months.

103. The Board will remain seized of these matters for the purpose of dealing with any disputes that arise concerning the implementation of the Board's order.

104. Accordingly, the Union's application for certification in File No. 0532-88-R is hereby dismissed, and its complaints in File Nos. 0533-88-U and 1197-88-U are allowed to the extent indicated herein.

#### **DECISION OF BOARD MEMBER H. PEACOCK; November 30, 1989**

1. I dissent.

2. There are three issues of concern:

- a) the extent to which the various violations found against the employer interfere with the free selection process guaranteed by section 3 of the Act;
- b) the majority's opinion that remedies other than a section 8 certificate are adequate to redress the employer's breaches of the Act; and
- c) whether membership support at or above 30 per cent, or some other criteria, should constitute "membership support adequate for collective bargaining." (The third of the Section 8 conditions.) This becomes a consideration only if the second condition -- the true wishes test -- is found to be unlikely to be ascertained.

3. In my opinion, the employer violations of the rights of OBI employees, as found by the whole panel, constitute substantial misconduct and are of sufficient weight to require the Board to certify the applicant under the provisions of section 8.

4. It is useful to set out in a list the whole range of misconduct as described in paragraphs 84 through 87 and 90 and 91:

- Management's interrogation of employees concerning their support for the union;
- Foreman Leether's suggestion to Peter Galeota about whether or not to attend the union meeting of April 20;
- prohibiting employees from engaging in union solicitation on company property, while shutting down the entire plant to enable employee representatives to meet and organize the circulation of petitions against the union;
- permitting Mr. Pereira, a known opponent of unionization, to call Portuguese-speaking employees to his foreman's office to review company benefits with them and to express the view that they did not need a union;
- isolating the union's employee organizers and supporters by transferring them out of their regular jobs to the service department across the street from the main plant and to the air system assembly area in Mr. Trajkovic's case;

- prohibiting telephone calls, conversations with other employees and visits to the main plant by the identified union supporters;
- close supervision of George Chioconi after his transfer to the electrical room which included escort by his foreman whenever he left the room to pick up blueprints, etc.;
- the positioning of foremen in the hallway of the hotel where the union was meeting on April 20, either to discourage employees from attending or to ascertain which employees were in attendance;
- interfering with the union's leafletting activities outside the plant.

5. The majority concludes that these violations in themselves do not add up to the loss of an environment free of undue influence wherein the true wishes of employees can be ascertained in a representation vote. I disagree. With respect, I find that the number, nature and sequence of unlawful events of the week of April 18, 1988 (plus the last of the above list) and the combination of those events, for those employees in a position to observe or to learn of them, more than fulfil the conditions attached to the second of the three tests set out in the *DI-AL Construction Limited* case (paragraph 95).

6. The violations are numerous. Some involve the president of the company himself in front of other employees; (personally taking Mr. Galeota from his work Monday morning to interrogate him, the parking lot leafletting incident), his production manager Brian Cox and various members of supervision. And they occurred in many different parts of the plant (the parking lot, the Orion II line, the service department, a foreman's office, the president's office, the electrical room).

7. It must have appeared to employees that the management team was obsessed with the news of a union drive in the plant that week, beginning April 18th. *Monday* morning, Mr. Sheardown starts by calling employees (Galeota) to his office or going to them (Eland and Sharp) to enquire as to their involvement with the union.

8. Galeota leaves Mr. Sheardown's office to canvass various Orion II line workers if they wish to join the union and is called back to Mr. Sheardown's office to declare whether he will change his mind about supporting the union.

9. Mr. Sheardown convenes at midday a general meeting of employees, including the service department workers, to advise that a number of employees had met with the CAW the week before. After the meeting, Mr. Trajkovic is escorted to Mr. Cox's office to discuss the allegations he had made at the meeting. On Mr. Galeota's information, Mr. Sheardown calls Mr. Chioconi to his office to identify himself as to why he had become a union supporter. Also that afternoon, Mr. Sheardown speaks angrily to Mr. Valencia about his "betrayal".

10. *Tuesday* morning Mr. Galeota is told of his transfer and escorted by Mr. Leether to get his toolbox and then to the Service Department. Mr. Chioconi is dealt with similarly. Later that morning he is called to the Personnel Office to be given his warning letter. Mr. Trajkovic is transferred and escorted to the air system assembly area after starting work *Tuesday* morning.

11. For most of the afternoon, the plant is shut down, at the apparent request of union opponents and with Mr. Sheardown's agreement.

12. *Wednesday* afternoon Mr. Pietras is spoken to by Mr. Sheardown, Mr. Cox and Mr. Wakeley at different times. Mr. Eland speaks with many of the employees on the Orion II line for

most of the day Wednesday to urge them to attend the CAW meeting of that evening to show support for the Company. Foremen position themselves outside the CAW meeting room.

13. On *Thursday*, Mr. Sheardown calls Mr. Sousa into his office and accuses him of starting rumours in the plant, for which Mr. Sousa was given a written warning.

14. On *Thursday* or *Friday*, it is not clear which, Mr. Sheardown convenes a second general meeting to declare that the CAW's Wednesday evening meeting showed a majority of employees supported the Company and he deals with the Trejkovic incident. On *Thursday*, Mr. Valencia and Mr. Pietras are given the warning letter by Mr. Cox.

15. On *Friday*, Mr. Janczyk is transferred to the service department and later that day Mr. Sheardown addresses the employees to explain that Mr. Janczyk had been transferred for his own protection and asks people not to sign union cards on company property. Mr. Valencia is transferred to the service department that day from the Orion II line.

16. On *Tuesday*, *Wednesday* and *Thursday* petitions are circulated during working hours with the permission of Mr. Sheardown.

17. Sometime that week, Mr. Pereira is permitted to call Portuguese-speaking employees into his foreman's office during working hours to tell his mates that they did not need a union.

18. It is accepted that not all of the events described above were violative of the Act. It is clear, however, that the respondent employer, by making available its premises to employees interested in mobilising opposition to the union, and in undertaking to halt production without loss of wages to employees, was providing those interested in opposing the union with a substantial advantage over those who were endeavouring to marshal support for the union, contrary to Section 64. (*Somerville Belkin Industries Ltd.* [1980], OLRB Rep. May 791 at 800-802)

The granting of company time and use of premises had four purposes:

- a) to convey information to Mr. Sheardown about the extent of support for unionization;
- b) to denounce union supporters, in the case of Mr. Valencia, before other employees of the Orion II line (paragraph 25);
- c) to organize a demonstration of support for the company at the CAW's Wednesday Ramada Inn organizing meeting (paragraph 56); and
- d) in Mr. Pereira's case, to turn Portuguese-speaking employees against the union.

19. Had we to enquire into the voluntariness of a petition prepared and circulated during the week of April 18th, the pages of which were returned to and collected by Mr. Sheardown himself, the Board would have found it tainted beyond any shred of doubt. Some employees, at least, must have realised that, whatever their feelings, they might be at risk if their names did not appear on the petitions being returned to Mr. Sheardown. The granting of large amounts of production time to anti-union, pro-company supporters with pay, contrasted as nothing else could with the warning to all employees posted only two weeks earlier of the consequences of theft of company materials, equipment and *time*. Specifically, the non-disciplinary treatment of union opponents contrasted with the written warnings addressed to union supporters. Those warnings threatened termination for union solicitation, and emphasized the earlier April 6th theft-of company-time general warning. Overt discrimination by the employer was the rule that week. How then can the



Board find that the true wishes of employees in these circumstances are still likely to be ascertained?

20. I turn now to the analysis the Board must undertake in the second of the three tests under S. 8 to determine whether the true wishes of employees can be determined in the circumstances of each case. The phrase in Section 8 governing the second test reads:

“...so that the true wishes of the employees of the employer...are not likely to be ascertained...”

21. This is construed in *DI-AL* (as quoted in paragraph 95) to mean that neither a representation vote nor some other means -- in our system, the signing of union membership application cards -- would disclose the true wishes of employees.

22. My emphasis, in this case, must be on the importance of the word “likely” in Section 8. Its enactment by the legislature clearly gives the Board the discretion to weigh the impact of the employer’s misconduct on employees’ freedom to choose. The Board is not required to find with absolute certainty that the breach suppresses a free expression of desire for collective bargaining representation.

23. In *Maplehurst Hospital Limited* [1986] OLRB Rep. July 996, the Board set out the following analysis:

The majority agrees that the assessment of the representational wishes of the employees is to some extent speculative. Obviously, the Board cannot “read the minds” of those employees to conclusively determine whether those persons could exercise their franchise without being intimidated or improperly influenced by their employer. However, the statute does not prescribe so rigorous a standard; rather, the test is whether the true wishes “are not likely to be ascertained”. It is for this reason that the Board requires substantial employer misconduct to justify the extraordinary remedy of certification pursuant to section 8: *Radio Shack*, [1979] OLRB Rep. Mar. 248, upheld 79 CLLC 14,216 (Ont. Div. Ct.); *Ex-Cello Wildex, Canada*, [1977] OLRB Rep. June 370; *Manor Cleaners Limited*, [1982] OLRB Rep. Dec. 1848; *Benwind Industries*, [1985] OLRB Rep. Feb. 149. However, the Board does look to the cumulative impact of the employer’s illegal activities: *K Mart Canada Limited (Peterborough)*, [1981] OLRB Rep. Jan. 60; *Robin Hood Multi-Foods Inc.*, [1981] OLRB Rep. July 972; *Benwind Industries, supra*

[emphasis in original]

24. The line of cases cited above does indeed contain applications of section 8 to remedy substantial violations of employee rights, violations that go well beyond the meaning of that word to the point that I would use the words ‘extreme’ or ‘gross’ to characterize the employer actions. Do *Maplehurst* and the cases cited in the above quotation, then, require that only violations of such magnitude are likely to deny a free expression of opinion? Surely that is not what was intended. I note and adopt the last sentence:

However the Board does look to the cumulative impact of the employer’s illegal activities: *K Mart Canada Limited (Peterborough)*, [1981] OLRB Rep. Jan 60; *Robin Hood Multi-Foods Inc.*, [1981] OLRB Rep. July 972; *Benwind Industries, supra*.

25. The *Ontario Bus Industries* case is a case of cumulative impact falling somewhere below the *Radio Shack* or *Manor Cleaners* degree of misbehaviour but without a doubt, well within the “not-likely-to-be-ascertained” ballpark. (See also *The Globe and Mail Division* case [1982] OLRB Rep. Feb. 189. It is the finding of the Board that Mr. Sheardown did not make threatening comments at the two general meetings. Notwithstanding the absence of this type of violation in this

case, how were employees to sort out what was permissible conduct and what was non-permissible on the part of the employer in the turbulent anti-union atmosphere of that week? The Board must look, I submit, not at each contravention in isolation from the others, or from other events, but from the perspective of employees who could not possibly be expected to construe that the dismissal of Mr. Trajkovic and the suspension of Mr. Pietras were untainted by the anti-union animus that underlay Mr. Sheardown's other actions against the union supporters. That is always a risk for an employer, once it crosses the line and blurs the objective perception of employees. There is no ideal state of freedom of choice even in a democracy but the last place to look for it is in a workplace such as Mr. Sheardown's plant during the week of April 18th. Nor is it open in law to an employer - especially one of Mr. Sheardown's "commanding personality and management style" - to find out if he and his team have failed to do their job as managers, and to concede to employees "a right to bring in a third party", only if they have failed. Whether or not he and his managers failed is not what brings about certification. Their failure is not a pre-condition to the employees' exercise of their rights. Mr. Sheardown interfered to such an extent that we cannot know by the usual means -- cards or a vote -- whether his employees want a "third party" to represent them. How would a so-called undecided or neutral employee have viewed any one of Mr. Sheardown's actions, or some combination of them that came to his or her attention? Could there be any doubt in the mind of such a person that the management team was not only expressing a desire to remain union-free, but was prepared to take a number of visibly retaliatory measures to prevent unionization?

26. No doubt, there were employees other than the employees reps, perhaps a large number, who opposed the union voluntarily, to the extent such uninhibited consideration is possible in a workplace, and would have done so without benefit of the two addresses by Mr. Sheardown. The totality of the employer's behaviour, nevertheless, leads to a conclusion that OBI deprived its employees in general of the ability to choose freely, in an atmosphere comparatively free of undue influence by the employer. I say "comparatively" because of the evidence of the fostering of a union-free environment coupled with the gratuitous use of company time and premises by the reps to organize opinion against unionization and report the results to the president.

27. It is utterly improbable that the employer's actions cumulatively did not have a chilling effect on actual or potential support for the union. We cannot gauge how many uncommitted employees may have become alienated from the decision-making process. Suffice that the free will of only a handful of neutral people was effectively squelched for the Board to conclude that a meaningful expression of views for or against collective bargaining has been lost.

28..Those who were intimidated out of the exercise of a free choice will not be reassured by the remedies ordered by the majority.

29. I cannot imagine how provision of a list of employees and communication with them, even on a one-on-one basis, is compensatory for the overwhelmingly adverse impact the employer must have achieved in the minds of uncommitted employees or those inclined to support a union.

30. Apart from the direction to cease and desist against the employer, the remedy of the majority, practically, is to give the applicant trade union another chance to appeal to the employees. Given the fostering over a number of years of an animosity toward unionization as solidified during the week of April 18th, the fears raised by the employer's actions cannot be dispelled sufficiently to allow the true wishes of the employees to be ascertained, certainly not by a vote. Nor is it likely that their true wishes can be expressed over the short term, even in the privacy of their homes were the applicant to renew its organizing efforts by mail solicitation or house visits, as the remedy suggests (item 4). Memories of seeing union supporters being removed from their jobs and

escorted to an isolated work area and the association of the two captive audience meetings of the week of April 18th with the appearance of a union in the minds of employees will be powerful reminders of the risks of supporting a union.

31. Having found that the true wishes of employees are not likely to be ascertained because of substantial violations by the employer, and that the remedies of the majority decision are inadequate, I wish to look at the last of the 3 questions which decide Section 8. The majority did not reach that conclusion and therefore did not deal with the issue.

32. The third condition for the application of Section 8 is for the Board to find that the trade union has membership support adequate for the purposes of collective bargaining. In decision after decision, the Board has first repeated the disclaimer that the issue is not simply a question of numbers or percentages. (e.g. *Manor Cleaners* citing *Viceroy Construction Company*)

33. Indeed, nevertheless, the level of 30 percent membership support has become a threshold below which no reported Section 8 certifications have issued. Counsel for the respondent employer drew our attention to that pattern when he put in a table of cases from 1977 to the present, only one of which, *Windsor Airline Limousine Service Ltd.* was marginally below 30 per cent, but was achieved in one of two associated bargaining units.

34. The circumstances, other than numbers, to which the Board has had regard in earlier cases are not present here, except as to the severity of the employer violations (*Manor Cleaners* paragraph 21). What is dominant is the stage of organizing at which the employer learned of the drive and moved against it. The first cards signed by OBI employees were collected just 3 days before Mr. Sheardown's first contravention of the Act on Monday, April 18th. Where an employer moves quickly and effectively to interfere with a drive, as Mr. Sheardown did, the third requirement can easily be frustrated by unlawful activity. It is then no longer a matter of foisting a trade union on an unwilling majority but a "catch-22" situation where the Board cannot find adequate membership support for the very reason that the employer has signalled employees not to sign cards affirming that support.

35. To my mind *Trulite Industries Limited* [1983] OLRB Rep. May 821 (a 30 per cent case) at page 827 best describes how the Board should approach the dilemma posed by Section 8:

24. The competing policy considerations which underlie section 8, are aptly set out by the British Columbia Labour Relations Board in commenting on a similar provision in its own statute, In *International Brotherhood of Boilermakers, Lodge 359 and Forano Limited* (1974) Can. L.R.B.R. 13, The Board observed at page 20:

... Certification without a vote... creates a real disincentive to the use of [intimidatory] kinds of tactics. It does so by depriving the offender of the fruits of its unlawful conduct... However, that is just part of the case for this remedy, because the party primarily affected by the certificate is the employees. We can assume that the Legislature did not want to visit the sins of the employer or the union on the innocent employees, who, after all, are supposed to be the beneficiaries of this freedom of choice about collective bargaining. Accordingly, the remedy is to be used where one cannot feasibly determine the true wishes of the employees through the normal means... I think everyone is aware of the risks involved in that kind of certification. In some cases, the employees may have foisted upon them a bargaining representative which they really don't want. Undoubtedly, the remedy must be carefully used...

25. As the above comments indicate, the wishes of the employees are always the Board's primary concern, and the remedy is not meant to be punitive; moreover, where support is not really there, the Board would not be placing the union in an enviable position by granting a certificate. Without the support of the employees the union would have a difficult time negotiating



a collective agreement, and it would ultimately face the prospect of a termination application. On the other hand, the Board must not hesitate to consider the provisions of section 8 when it is the employer's own misconduct that impairs the Board's ability to ascertain with more certainty what the wishes of the employees really are. As the British Columbia Board went on to say:

... The Board must not be afraid to use it [the certification remedy] when it appears appropriate. The Legislature conferred it for the very good reason that there is another equally serious risk to employee freedom. The majority in a unit may really want collective bargaining but have been intimidated from choosing it openly. The only way they will get it, is for the Board to certify the union...

36. The likelihood of failure of a union organizing campaign for whatever reason, (e.g. language barriers or a well-entrenched opposition) is not determinative of a section 8 application where the employer has clouded by its misconduct the glass through which we must look. Where the employer actions prevent a clear reading of the employees' wishes, those employees must be given the opportunity, subject to the meeting of the third condition, to try out a collective bargaining regime to regulate their relationship with the employer.

37. **The policy behind section 8 cannot be evaded because only a small number of employees had the chance to express themselves before the employer intervened.**

38. How then should the Board assess the adequacy or membership support especially where, as in this case the proportion of cards to eligible bargaining unit employees is a comparatively low 17 per cent? I say, in the broadest possible labour relations terms. There has been some recognition of this approach in *Zenith Wood Turners Inc.* [1987] Nov. 1443 citing *K-Mart Canada Limited (Peterborough)* [1981] OLRB Rep. Jan 60 as follows:

In determining whether a union has support adequate for collective bargaining purposes within the meaning of [section 8] of the Act, the Board's concern is whether there is a number of employees, sufficiently representative of the employees in the bargaining unit, with the ability to negotiate with their employer on the content of a collective agreement. *In this regard, bargaining ability is to be distinguished from bargaining power.* The question is not whether they can amount a successful strike, or whether they will eventually realize substantial gains at the bargaining table. Rather, it is whether they have the core of support sufficient to negotiate with the employer. A [section 8] certificate, like any certificate, is only a beginning and need not be seen as anything more. (my emphasis)

39. The above quotation takes on added significance with the availability of access to first contract arbitration where a respondent employer is found to have rendered the process of collective bargaining unsuccessful. Section 40a was enacted because the Legislature recognized that section 8 was not a complete remedy in itself, even though it is an extraordinary one. Many section 8 certifications did not necessarily lead to a first collective agreement, because of the on-going chilling effect both of the employer violations during the organizing stage and intransigent positions at the bargaining table.

40. The section 40a first contract provision also gives effect to the principles found in the Preamble of the Act.

Whereas it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.

41. On our part, as adjudicators, we are regularly reminded that the Labour Relations Act is not punitive. Neither is it neutral, I submit. I would direct that a certificate issue.

# Appendix

## Labour Relations Act

# NOTICE TO EMPLOYEES

**Posted by Order of the Ontario Labour Relations Board**

WE HAVE POSTED THIS NOTICE IN COMPLIANCE WITH AN ORDER OF THE ONTARIO LABOUR RELATIONS BOARD ISSUED AFTER A HEARING ARISING OUT OF THE EFFORTS OF THE NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS UNION OF CANADA (CAW-CANADA) TO BECOME THE COLLECTIVE BARGAINING AGENT FOR OUR EMPLOYEES. THE ONTARIO LABOUR RELATIONS BOARD FOUND THAT WE VIOLATED THE LABOUR RELATIONS ACT BY INTERROGATING EMPLOYEES CONCERNING THEIR SUPPORT FOR THE UNION AND THEIR ORGANIZING ACTIVITIES, PROHIBITING EMPLOYEES FROM ENGAGING IN UNION SOLICITATION ON COMPANY TIME AND PROPERTY WHILE CONCURRENTLY PERMITTING EMPLOYEES TO ENGAGE IN ACTIVITIES IN OPPOSITION TO THE UNION ON COMPANY TIME AND PROPERTY, ISOLATING UNION ORGANIZERS BY TRANSFERRING THEM OUT OF THEIR REGULAR JOBS AND TREATING THEM IN A DISCRIMINATORY MANNER FOLLOWING THEIR TRANSFERS, AND OTHERWISE INTERFERING WITH OUR EMPLOYEES' SELECTION OF A TRADE UNION.

THE ACT GIVES ALL EMPLOYEES THESE RIGHTS:

To ORGANIZE THEMSELVES;

To FORM, JOIN, AND PARTICIPATE IN THE LAWFUL ACTIVITIES OF A TRADE UNION;

To ACT TOGETHER FOR COLLECTIVE BARGAINING;

To REFUSE TO DO ANY OR ALL OF THESE THINGS.

WE ASSURE ALL OF OUR EMPLOYEES THAT:

WE WILL NOT DO ANYTHING TO INTERFERE WITH THESE RIGHTS.

WE WILL CEASE AND DESIST FROM INTERROGATING EMPLOYEES CONCERNING THEIR SUPPORT FOR THE UNION AND THEIR ORGANIZING ACTIVITIES; PROHIBITING EMPLOYEES FROM ENGAGING IN UNION SOLICITATION ON COMPANY PROPERTY, OR ON COMPANY TIME WHILE CONCURRENTLY PERMITTING EMPLOYEES TO ENGAGE IN ACTIVITIES IN OPPOSITION TO THE UNION ON COMPANY TIME; ISOLATING UNION ORGANIZERS BY TRANSFERRING THEM OUT OF THEIR REGULAR JOBS; AND OTHERWISE INTERFERING WITH THE EMPLOYEES' SELECTION OF A TRADE UNION.

WE WILL RESCIND WRITTEN WARNINGS THAT WERE ISSUED IN RESPECT OF UNION SOLICITATION ON COMPANY PROPERTY, AND REMOVE THEM FROM OUR RECORDS.

WE WILL PROVIDE THE UNION WITH A LIST OF NAMES AND ADDRESSES OF ALL OF OUR EMPLOYEES, OTHER THAN THOSE EXCLUDED FROM THE BARGAINING UNIT, AND WILL KEEP THE LIST UPDATED ON A MONTHLY BASIS FOR A PERIOD OF SIX MONTHS.

ONTARIO BUS INDUSTRIES INC.

PER:

\_\_\_\_\_  
PRESIDENT

**This is an official notice of the Board and must not be removed or defaced.**

**This notice must remain posted for 60 consecutive working days.**

Apêndice

Legislação de Relações de Trabalho

# AVISO AOS EMPREGADOS

## Afixo por Ordem da Direcção de Relações de Trabalho do Ontario

Este aviso foi colocado conforme a ordem dada pela Direcção de Relações do Trabalho no Ontario e esta foi emitida depois de uma audiência que surgiu depois do esforço feito pelo Sindicato Nacional dos Empregados da Indústria de Automóveis, Aeroespacia e Agricultura do Canada (National Automobile, Aerospace and Agricultural Implement Workers of Canada [CAW-CANADA]) para serem negociantes colectivos dos nossos empregados. A Direcção de Relações do Trabalho no Ontario diz que nos violamos a Legislação de Relações do Trabalho por ter interrogado os empregados à cerca do apoio dado ao sindicato e as suas actividades organizadas; por ter proibido aos empregados de participar na solicitação do sindicato durante as horas e lugar de trabalho. Isto foi efectuado ao mesmo tempo em que permitimos aos empregados de participar em actividades que opõem o sindicato durante as horas de trabalho no lugar de trabalho, isolando os organizadores do sindicato transferindo-os para fora de trabalho habitual e deitando-os de uma forma discriminatória após a transferência, e interferindo com a selecções de um sindicato operário por parte dos nossos empregados.

A Legislação dá aos empregados os seguintes direitos:

O direito de se organizarem;

O direito de formar, de se juntar, e de participar nas actividades legais de um sindicato operário;

O direito de agirem juntos para negociar colectivamente

O direito de recusar de fazer alguma ou todas estas coisas

Nos garantimos aos nossos empregados que:

Nos não iremos fazer nada que interfere com estes direitos.

Nos vamos parar e desistir de: interrogar os empregados à cerca do seu apoio do sindicato e as actividades organizadas; proibir aos empregados de participar na solicitação do sindicato no lugar ou durante as horas de trabalho enquanto que permitimos aos de participar em actividades que opõem o sindicato durante as horas de trabalho; vamos também parar e desistir de isolar os organizadores do sindicato, ou seja, transferi-los para fora do seu trabalho habitual e de interferir com a escolha do sindicato pelo empregado.

Vamos remover os avisos escritos que foram emitidos com respeito à solicitação do sindicato no lugar de emprego e vamos removê-los das nossas fichas.

Vamos dar ao sindicato uma lista com os nomes e os endereços de todos os nossos empregados, excepto aqueles excusados da unidade negociante, e vamos manter esta lista em dia durante 6 meses.

Indústria de Autocarros do Ontario  
(Ontario Bus Industries Inc.)

Por:

\_\_\_\_\_  
Presidente

**Este é um aviso oficial da Direcção e não pode ser retirado  
ou desfigurado**

**Este aviso permanecerá afixo durante 60 dias úteis consecutivos.**  
põe a data 30 O dia de Novembro, 1989.



**1764-89-U** Sheet Metal Workers International Association, Local 30, Applicant v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 and D. Clark, Watts & Henderson Limited, **Rexway Sheet Metal Limited**, English & Mould Limited, Respondents

**Jurisdictional Dispute - Remedies - Settlement - Unfair Labour Practice - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *S.B.D. Wahl*, *J. MacKenzie* and *J. Moffat* for the Sheet Metal Workers International Association Local 30; *A. J. Ahee* for United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46; *Lionel G. Clarke* for D. Clark; *Keiuh Billings* and *L. Cianfarani* for the Ontario Sheet Metal and Air Handling Group; no one appearing on behalf English & Mould Limited and Sayers and Associates Limited.

**DECISION OF THE BOARD;** November 17, 1989

1. This matter came on for hearing on November 16, 1989. Subject to an express reservation of the right to edit and expand on the oral reasons given therefor at the hearing, the Board ordered that:

- (1) all work in connection with continuous wall-to-wall convactor heating at the B.C.E. job site of Watts and Henderson Limited - Rexway Sheet Metal Limited, at the 100 Yonge Street job site of English and Mould Limited, and at the Dome Stadium hotel job site of Sayers & Associates Limited be assigned to a crew consisting of equal numbers of United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 pipefitters and Sheet Metal Workers International Association, Local 30, members as follows:
  - (a) all work in connection with the installation of sheet metal convactor enclosures to Sheet Metal Workers International Association, Local 30 members; and
  - (b) all work in connection with the installation of piping and fin coils to United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 pipefitters
- (2) This order is to remain in effect until such time as the specified work is completed, the parties agree otherwise, or the jurisdictional dispute which is at the root of the complaint herein is otherwise resolved or determined.

2. The Board reasons for issuing the above order follow.

3. This is an application for a direction under section 135 of the *Labour Relations Act*. More specifically, the applicant alleges a lock out and seeks relief with respect thereto. The matter originally came on for hearing on October 23, 1989 (together with another similar complaint in Board File No. 1775-89-U which was not before me on November 16, 1989). In the course of the hearing on October 23, 1989, the parties entered into written minutes of settlement as follows:

Sheet Metal Workers International Association Local 30

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 46

David Clark

Watts & Henderson Limited

Rexway Sheet Metal Limited

English & Mould Limited

OLRB File No. 1764-89-U

-----

Sheet Metal Workers International Association Local 30

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 46

David Clark

Sayers and Associates Limited

OLRB File No. 1775-89-U

-----

All parties to the above captioned proceedings agree to settle their differences to date being the subject matter of the above captioned proceedings before the Ontario Labour Relations Board as follows:

1. The applications are *NOT* withdrawn;
2. The hearings scheduled for Monday, October 23, 1989 are adjourned *sine die*, to be brought on for hearing on 24 hours' notice by telegram to the offices of:

Ontario Labour Relations Board

United Association, Local 46 for both U.A. Local 46 and David Clark

Watts & Henderson Limited

Rexway Sheet Metal Limited

English & Mould Limited

Sayers and Associates Limited

3. All parties agree to reinstate and perform the original assignment of work at:
  - (i) the B.C.E. Place job site of Watts & Henderson Limited - Rexway Sheet Metal Limited;
  - (ii) 100 Yonge Street job site of English & Mould Limited; and
  - (iii) Dome Stadium Hotel job site of Sayers and Associates Limited,

of all work in connection with continuous wall-to-wall convector heating [sic] to a

crew consisting of equal numbers of U.A. Local 46 pipefitters and Sheet Metal Workers, Locals 30 members allocating such work as follows:

- (i) all work in connection with the installation of sheet metal convactor enclosures to Sheet Metal Workers, Local 30 members; and
  - (ii) all work in connection with the installation of piping and fin coils to U.A. Local 46 pipefitters.
4. A meeting to discuss a full and final resolution of this matter shall take place between representatives of U.A. Local 46 and Sheet Metal Workers, Local 30 on Friday, October 27, 1989. This interim agreement shall be without prejudice to the discussions to take place at that time.

Dated at Toronto this 23rd day of October 1989

Sheet Metal Workers International Association Local 30

per: "James A. McKenzie"

"James F. Moffat"

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46

per: "David Clark"

David Clark "David Clark"

Watts & Henderson Limited

per: "Reno Stevenato"

Rexway Sheet Metal Limited

per: "Harold Lorenz"

English & Mould Limited

per: "E. Waisman"

Sayers and Associates Limited

per: "Vince Robbins"

Ontario Sheet Metal and Air Handling Group

per: "L. Cianfarani"

Pursuant thereto the hearing was adjourned *sine die*.

4. By telegram and letters dated November 15, 1989, the applicant alleged a breach of the aforesaid agreement between the parties, provided particulars of the alleged breach, and requested a hearing with respect thereto.

5. A hearing was scheduled on twenty-four hours notice to the parties (in accordance with their agreement). Although counsel for the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 ("UA Local 46")



said that *he* did not get twenty-four hours notice, the agreement provides only for notice to the parties and there was no suggestion that they did not receive it.

6. At the hearing, the applicant, supported by the Ontario Sheet Metal and Air Handling Group (which participated without objection from any named party) requested that the aforesaid agreement between the parties be enforced pursuant to either subsection 89(7) of the Act or, in the alternative, pursuant to what counsel described as the Board's general plenary jurisdiction. In the alternative, the applicant sought to have the hearing continue from where it had left off prior to the written agreement being entered into on October 23, 1989.

7. The respondents UA Local 46 and D. Clark submitted that subsection 89(7) of the Act did not apply and that the Board did not, in any event, have any jurisdiction to deal with the matter. In that regard, they asserted that the settlement agreement, and indeed the entire application, had been spent. They submitted that through the settlement, the parties had resolved all matters in dispute between them in the application as filed and thereafter the settlement agreement governed. Further, they argued, that settlement agreement contemplated no more than that the work be assigned in accordance with paragraph 3 thereof only until October 27, 1989 when the parties met and tried to resolve the matter. At that meeting there were, according to these respondents, three options:

- (a) the parties could have arrived at a new work assignment arrangement; or
- (b) the parties could have agreed to the extend the interim arrangements set out in paragraph 3 of the settlement agreement; or
- (c) the parties could have failed to reach any agreement at all.

These respondents submit that the third option in fact transpired and that this had the effect of permitting or freeing the parties to take whatever position they wished with respect to the work assignment in question and that the respondent employers were left free to assign that work in any manner they wished (or at least unrestricted by the settlement agreement). These respondents agreed that what eventually occurred is accurately set out in the applicant's particular letter dated November 15, 1989 at paragraph 26 as follows:

On November 10, 1989 George Cowl and Reno Stevenato of Watts and Henderson-Rexway determined to lift the suspension of work and change the assignment to:

- (i) equal numbers of U.A. Local 46 pipefitters and Sheet Metal Workers, Local 30 members performing all work in connection with the installation of sheet metal convactor enclosures;
- (ii) U.A. Local 46 pipefitters will perform all work in connection with the installation of piping and fin coils.

In short, the position of these respondents is that there is nothing left to enforce.

8. The respondent Watts & Henderson Limited supported the respondents U.A. Local 46 and D. Clark. The respondent Rexway Sheet Metal Limited made no submissions. Neither of them disputed the accuracy of paragraph 26 of the applicant's particular letter.

9. I could not, would not, and did not purport to decide the jurisdictional dispute which is the real matter in dispute between the parties. That was not directly before me. Nor did I have any jurisdiction to do so in any event. However, I concluded that I did have the jurisdiction to deal with a question what affect, if any, could now be given to the settlement agreement.

10. Subsections 89(1) and (7) of the *Labour Relations Act* provide that:

89.-(1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of this Act.

(7) Where the matter complained of has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the parties or their representatives, the settlement is binding upon the parties, the trade union, council of trade unions, employer, employers' organization, person or employee who have agreed to the settlement and shall be complied with according to its terms, and a complaint that the trade union, council of trade unions, employer, employers' organization, person or employee who has agreed to the settlement has not complied with the terms of the settlement shall be deemed to be a complaint under subsection (1).

11. The respondents UA Local 46 and D. Clark referred to *Greens Ambulance*, [1978] OLRB Rep. July 637 in support of their submission that subsection 89(7) was not applicable to this matter. In that case, the Board found that there had been no complaint filed with the Board as required by what is now subsection 89(7) and, second, that there had not in fact been any settlement to enforce. In my view, the provisions of section 89 apply, in the words subsection 89(1) to "any complaint alleging a violation of the Act". In this case, the applicant complained that the respondents engaged in conduct contrary to, or in violation of the Act. There was no dispute that there was a settlement of that "complaint" (though the affect thereof was disputed). To the extent that *Greens Ambulance*, *supra*, suggests that subsection 89(7) applies only to complaints filed under section 89, I respectfully disagree. Further, and in any event, I am satisfied that the Board has jurisdiction to deal with complaints that settlement of matters properly brought before it have been breached in circumstances like those in this proceeding. If that were not the case, it would tend to make a mockery of the settlement process and permit parties to ignore settlements with impunity. This Board is constituted as an expert administrative tribunal and is charged with the responsibility of applying and administering the *Labour Relations Act*. It would indeed be curious if a party could remove from the Board a matter which is within its exclusive original jurisdiction through the simple expedient of entering into and then not honouring a settlement agreement. Even if an aggrieved party to a settlement agreement could go to some other forum for relief, surely the Legislature could not have contemplated or intended that some forum other than this Board should deal with the matter specifically within the labour relations expertise and original jurisdiction of the Board.

12. With respect to the settlement agreement itself, I was of course obliged to consider and construe the agreement as a whole. Taken as a whole, I was satisfied that this agreement did resolve this application and that there was no time limit on the work assignment agreed to it. First, there is no time limit specified with respect to that assignment. Second, the last sentence of paragraph 4 of the agreement was, on their own admission, put into the agreement at the instance of the respondents UA Local 46 and D. Clark. If the work assignment was to be time limited in the manner of those respondents assert why was this sentence necessary at all? In my view, if the work assignment was to end on October 27, 1989, unless extended by mutual agreement, it was completely unnecessary. Third, the word "interim", which describes the agreement (in the last sentence of paragraph 4 for example) is no more than a recognition, as all parties have recognized throughout, that the fundamental issue between the parties is the work jurisdiction of the two trade unions involved. It was intended only to emphasize that the work assignment which had been agreed to was not to be taken as being dispositive of that jurisdictional dispute. Fourth, I could not accept that any one could seriously have expected or believed that a dispute that had gone unresolved for months could be resolved in one day; that is, at a meeting to be held on October 27, 1989. If so, that, no pun intended, was a pipe dream.

13. Finally, I consider the suggestion that “original” assignment of work was not as set out in paragraph 3 of the agreement to be irrelevant to my considerations. In any event, the parties had defined the original assignment in their agreement for themselves by setting that out in paragraph 3. I also considered what meaning might be given to paragraphs 1 and 2 of the agreement. Paragraph 1 precludes any argument that there is nothing before the Board for it to deal with. Paragraph 2 provides a means by which problems which the applicant foresaw might occur could be brought back before the Board. In my view, these provisions do no more than illustrate the prudence with which the applicant approached the matter. They do not suggest that the agreement was anything less than a settlement. Nor do they suggest that either the settlement or the work assignment agreed to therein is time limited.

14. In the result, I was satisfied that I had jurisdiction to deal with the matter, and that there was valid existing settlement agreement which, having regard to the admission of the accuracy of paragraph 26 of the applicant’s November 15, 1989 particulars letter, had been breached. Accordingly, I thought it appropriate to make the order as set out in paragraph 1 above.

15. Finally, I wish to emphasize that nothing in each of the order which I saw fit to make or the reasons therefor should be taken to be a comment on the jurisdictional dispute between the two trade unions involved in this application. All that the Board has seen fit to do is enforce the interim without prejudice agreement in that respect which the parties have themselves made.

---

### **1055-89-R Salaried Employees Alliance ComDev, Applicant v. Senstar Corporation Respondent**

**Bargaining Rights - Sale of a Business - Company buying patent and assets for security technology - Successorship not precluded by failure to buy manufacturing equipment since patents and expertise essence of commercial activity - Board finding company would have no difficulty in obtaining equipment or contracting out - Bargaining rights for “greater Ottawa area” extending to company facilities at Carp - Unit description to be interpreted liberally since expansion outside Ottawa possible and parties not intending to limit bargaining rights to existing locations - Company arguing union constitution not allowing membership of employees of successor in sold business - Not necessary for union to show could have been certified to represent employees in question - Declaration of successorship and intermingling - Representation vote ordered**

**BEFORE:** *Owen V. Gray*, Vice-Chair, and Board Members *W. H. Wightman* and *P. V. Grasso*.

**APPEARANCES:** *Sherry Liang* and *Felicity Wormleighton* for Salaried Employees Alliance ComDev; *Russel W. Zinn* and *William Steadman* for Senstar Corporation.

**DECISION OF THE BOARD;** November 27, 1989

1. In this application, Salaried Employees Alliance ComDev (“SEAC”) alleges that there has been a sale of business by Computing Devices Company (“ComDev”) to Senstar Corporation (“Senstar”) to which section 63 of the *Labour Relations Act* (“the Act”) applies, and asks for a declaration that Senstar is bound by a collective agreement between SEAC and ComDev which was in effect at the time of the alleged sale.



2. Senstar opposes the application on three grounds:

- (a) that there has not been a sale of business within the meaning of section 63 of the Act;
- (b) that SEAC does not have the constitutional authority to take employees of Senstar into its membership or did not have such authority at the time of the alleged sale; and,
- (c) that the geographic scope of the bargaining rights SEAC has under its collective agreement with ComDev does not extend those to Senstar's location.

If there had been a sale of business and those employed by Senstar in that business fall within the geographic scope of the applicant's bargaining rights, the parties agree that those employees have been intermingled with those employed by Senstar in its pre-existing business, and that a representation vote should be conducted to determine under subsection 63(6) whether the applicant should continue to represent all such employees of Senstar as otherwise fall within the grammatical scope of its bargaining rights.

3. ComDev is a division of Control Data Canada Ltd., which is a subsidiary of or otherwise related to Control Data Corporation. ComDev is engaged in research, development and manufacturing of electronics and computer products and systems targeted primarily to military markets. It has carried on this business in the Ottawa area for a number of years. At the time of the alleged sale, ComDev was internally organized into a number of business areas, each of which was treated as a profit and loss centre. One of those areas was the surveillance systems division. At the time of the alleged sale, that division had two departments. One of those, the security systems department, was the focus of the transaction which is alleged to have been a "sale of business" within the meaning of section 63 of the Act.

4. ComDev's security systems department was primarily involved in the engineering development of intrusion detection systems based on "ported" or "leaky" coaxial cable technology, in which cables buried below or suspended above the ground's surface can be used to detect proximate motion by electro-magnetic means. This "leaky co-ax" technology had been the subject of research and development by ComDev for a number of years at the time of the alleged sale.

5. In the period 1980-81, ComDev gave some consideration to forming or participating in or encouraging the formation of a separate corporation to exploit the potential application of "leaky co-ax" technology to security products in non-military markets. Senstar Corporation was incorporated in October 1981 by four former employees of ComDev, three of whom had been involved in the development of perimeter security systems using the leaky co-ax technology, for the purpose of developing and selling in perimeter security systems employing that technology. Senstar says this was with the blessing of ComDev. If it was, that blessing had its limits.

6. In 1984, ComDev commenced an action in the Federal Court of Canada alleging that Senstar had infringed its patent on perimeter surveillance systems using leaky coaxial cables. Senstar and ComDev were by then in active competition in the supply of such products. The patent litigation seriously threatened Senstar's ability to carry on business. A trial judgement favouring ComDev issued on March 2, 1989. Senstar appealed. Before the appeal had been dealt with, ComDev and Senstar entered into a settlement of their dispute, pursuant to which Senstar was to purchase the patent in dispute and the other assets used by ComDev in the research, development, marketing and production of security systems. SEAC alleges that that transaction, which closed on August 2, 1989, constituted a "sale" of a "business" within the meaning of section 63 of the Act.

7. Subsections 1 and 2 of section 63 of the Act provide as follows:

63. (1) In this section,

- (a) “business” includes a part or parts thereof;
- (b) “sells” includes leases, transfers and any other manner of disposition and “sold” and “sale” have corresponding meanings.

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if he had been a party thereto and, where an employer sells his business while an application for certification or termination of bargaining rights to which he is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if he were named as the employer in the application.

8. The respondent concedes that the transaction between it and ComDev involved a “sale”. It denies that a “business” was sold. The Act does not define “business”; it has fallen to the Board to give that word meaning in a number of cases. Both parties referred to the Board’s decision in *Metropolitan Parking Inc.*, [1979] OLRB Rep. Dec. 1193. That decision contains a number of useful observations, including these:

30. A business is a combination of physical assets and human initiative. In a sense, it is more than the sum of its parts. It is a *dynamic* activity, a “going concern”, something which is “carried on.” A business is an organization about which one has a sense of life, movement and vigour. It is for this reason that one can meaningfully ascribe organic qualities to it. However intangible this dynamic quality, it is what distinguishes a “business” from an idle collection of assets. This notion is implicit in the remarks of Widjery, J., in *Kenmir v. Frizzell et al.*, [1968] 1 All E.R. 414 - a case arising out of legislation similar to section 55. At page 418 the learned judge commented:

“In deciding whether a transaction amounted to the transfer of a business, regard must be had to its substance rather than its form, and consideration must be given to the whole of the circumstances, weighing the factors which point in one direction against those which point in another. *In the end, the vital consideration is whether the effect of the transaction was to put the transferee in possession of a going concern, the activities of which he would carry on without interruption.* Many factors may be relevant to this decision though few will be conclusive in themselves. Thus, if the new employer carries on business in the same manner as before, this will point to the existence of a transfer, but the converse is not necessarily true, because a transfer may be completed even though the transferee does not choose to avail himself of all the rights which he acquires thereunder. Similarly, an express assignment of goodwill is strong evidence of a transfer of the business, but the absence of such an assignment is not conclusive if the transferee has effectively deprived himself of the power to compete. *The absence of an assignment of premises, stock-in-trade or outstanding contracts will likewise not be conclusive, if the particular circumstances of the transferee nevertheless enable him to carry on substantially the same business as before.*”

[Emphasis added]

Widjery, J. took the same approach as that adopted by this Board, concentrating on substance rather than form, and stressing the importance of considering the transaction in its totality. The vital consideration for both Widjery, J. and the Board is whether the transferee has acquired from the transferor a functional economic vehicle.

31. In determining whether a “business” has been transferred, the Board has frequently found it useful to consider whether the various elements of the predecessor’s business can be traced into the hands of the alleged successor; that is, whether there has been an apparent continuation of the business - albeit with a change in the nominal owner. The Board in *Culverhouse Foods Ltd.*, [1976] OLRB Rep. Nov. 691 (application for judicial review dismissed) commented:

"In each case the decisive question is whether or not there is a continuation of the business ... the cases offer a countless variety of factors which might assist the Board in its analysis; among other possibilities the presence or absence of the sale or actual transfer of goodwill, a logo or trademark, customer lists, accounts receivable, existing contracts, inventory, covenants not to compete, covenants to maintain a good name until closing or any other obligations to assist the successor in being able to effectively carry on the business may fruitfully be considered by the Board in deciding whether there is a continuation of the business. Additionally, the Board has found it helpful to look at whether or not a number of the same employees have continued to work for the successor and whether or not they are performing the same skills. The existence or nonexistence of a hiatus in production as well as the service or lack of service of the customers of the predecessor have also been given weight. No list of significant considerations, however, could ever be complete; the number of variables with potential relevance is endless. It is of utmost importance to emphasize, however, that none of these possible considerations enjoys an independent life of its own; none will necessarily decide the matter. Each carries significance only to the extent that it aids the Board in deciding whether the nature of the business after the transfer is the same as it was [sic] before, i.e. whether there has been a continuation of the business."

The issue before the Board remains whether there has been a "transfer of a business"; but it is much easier to make that finding, and to conclude that the collective bargaining relationship should be continued, if there is substantial continuity of all the other elements of the predecessor's business. If the elements formerly used by "A" to carry on business are now in the hands of "B", and used for the same business purposes, it is difficult to resist the conclusion that there has been some form of transfer from "A" to "B" - albeit complex and indirect, and perhaps even by operation of the law.

32. Of particular significance for a labour relations statute is the continuity of the work performed before and after the transfer, since the trade union is certified to represent certain work groups, the collective agreement regulates the conditions of work for employees in those groups, and the purpose of section 55 is to preserve both the bargaining relationship and the collective agreement. If the work performed subsequent to the transaction is substantially similar to the work performed prior to the transaction, there is normally a strong inference that there has been a transfer of the business within the meaning of section 55. This approach has not only been taken by the Board in a number of cases (see, for example, *Culverhouse*, *supra*, and *Dennis Moran* [1977] OLRB Rep. Apr. 277) but also appears to have been adopted by the British Columbia Supreme Court in *R. v. B.C. Labour Relations Board ex parte Lodum Holdings Ltd.*, (1969), 3 D.L.R. (3d) 41. In that case, the Court was considering an application for *certiorari* in respect of a decision involving what was then the successor rights section of the *British Columbia Labour Relations Act* (it has since been amended.) At page 52 Dryer, J. characterized the question before the Board as follows:

"One must keep in mind that the problem before the Labour Relations Board was one of labour relations and consequently, though as pointed out above the whole law must be considered, the weight to be assigned various factors and the inferences to be drawn from certain evidentiary facts are not necessarily the same as would be the case if the problem were one of, say, taxation or control of assets. *The importance of the "business" in its labour relations aspect is the jobs it provides for the employees. One factor to be considered therefore, is whether the same or substantially the same jobs are being performed. That depends on a number of factors such as whether the jobs are being performed at the same or substantially the same times and places, in respect of the same or substantially the same goods or services, and for the same or substantially the same customers or patrons, etc. These matters are, in my opinion, more important than the form of transfer.*"

[Emphasis added]

Unless there is a continuation of the work and jobs, it would make little sense to preserve the collective agreement. Accordingly, the continuity of the work done is an important indicium of a transfer of a business.



33. There need not be a transfer of the entire business before section 55 comes into play. The successor rights provisions may also be triggered by the transfer of "part of a business." [See section 55(1).] This language suggests that bargaining rights continue when something considerably less than "the totality of the undertaking" has been transferred. Presumably the Legislature envisaged the preservation of bargaining rights where there is a severance and transfer of a discrete, cohesive portion of the economic organization or activities which comprise the totality of "the business." The Board has found a transfer of "part of a business", where one of a chain of retail stores has been sold to a competitor (*Supercity Discount Foods*, [1979] OLRB Rep. Apr. 119; *Lablows Groceries Ltd.*, [1973] OLRB Rep. Jan. 73); where there is a transfer of the right and means to produce one of the products formerly produced by the predecessor's business; (*Canac Shock Absorbers*, [1973] OLRB Rep. Oct. 508); where there was a transfer of certain milk delivery routes in a particular geographic area (*Borden Co. Ltd.*, [1970] OLRB Rep. Jan. 1244), and where there was a transfer of the oil burner installation and service branch of a firm which was primarily engaged in the sale and delivery of fuel oil (*Automatic Fuels Ltd.*, [1971] OLRB Rep. May 515.) In each of these cases the Board found that the predecessor had transferred a coherent and severable part of its economic organization - managerial or employee skills, plant equipment, "know how" and goodwill - thereby allowing the successor to serve the market formerly served by the predecessor. This economic organization undertook activities which gave rise to employment, and the terms of employment, together with the union's right to bargain about them, were preserved. The part of the predecessor's business which it no longer wished to continue provided the business opportunity which the successor was able to pursue to its own advantage. It was otherwise in *Woodway Structural Components*, [1971] OLRB Rep. Nov. 732, *Canada Cement Lafarge Ltd.*, [1975] OLRB Rep. Dec. 905, and *Dufferin Steel*, [1976] OLRB Rep. Mar. 81. In these cases there was a significant change in the character of the work, product or market so that the Board concluded that what had been transferred was not the predecessor's business. The successor had merely incorporated incidental elements of that business into his own economic organization - even though each of the elements acquired could previously be found in the predecessor's business organization and, in that sense, were "part" or the predecessor's business. What was transferred lacked that dynamic quality which distinguishes an idle collection of surplus assets from an active, severable and coherent part of a going concern.

34. This distinction is easily stated, but the problem is, and always has been, to draw the line between a transfer of a "business", or "a part of a business" and the transfer of "incidental" assets or items. In case after case the line has been drawn, but no single litmus test has ever emerged. Essentially the decision is a factual one, and it is impossible to abstract from the cases any single factor which is always decisive, or any principle so clear and explicit that it provides an unequivocal guideline for the way in which the issue will be decided.

9. The agreement of August 2, 1989 between ComDev and Senstar ("the sale agreement") itself describes their transaction as a "transfer" of a "business". The following recital appears on the first page of the main body of the agreement:

#### INTRODUCTION

Seller desires to transfer, and Buyer desires to acquire the business, as a going concern, and the assets, subject to certain liabilities, of Seller's Business (as defined below), all upon the terms and conditions set forth below.

Article 1.05 of the sale agreement provides that

"Business" shall mean the Security Systems operations, consisting of the design, manufacture and sale of personnel-intrusion detection systems and products based on ported coaxial cable technology, coupled wave device technology and video motion technology, at Seller's Computing Devices Division, and shall include, without limitation, the following product lines-- GUIDAR, PCCS, SPIR, TOPLINE, REPELS, and DAVID. The "Business" shall also be deemed to include the following programs--Landslide Detection System, and Tactical VHS Surveillance Rada ("TVSR").

By article 2.01 of the sale agreement, ComDev agreed to sell and Senstar agreed to buy "all of

Sellers rights, immediately prior to the Closing, in the Purchased Assets.” Article 1.20 of the sale agreement defines the “Purchased Assets” as:

- (a) All assets (other than the Excluded Assets) reflected on the June Balance Sheet, subject to additions and deletions in the ordinary course of business; and
- (b) Except to the extent identified as Excluded Assets, all of the assets of Seller which relate principally to, or are used principally in connection with, the Business including, without limitation, the following:
  - (i) the “Contracts”, which shall include, except as otherwise provided to the contrary in this Agreement, all contracts, agreements, contract rights, license agreements, leases, selling agent agreements, purchase and sales orders and other executory commitments, oral or written, provided that “Contracts” shall not include: (A) existing contracts with the United States Air Force through Canadian Commercial Corporation relating to “PCCS”, and (B) intracompany/intercompany agreements or obligations within or between Seller and its Affiliates, and (C) Contract number 08164 with Mosler Inc., contract number 7265-0033 with Saudia Development Maintenance Co. Ltd. and contract number A734773 with Johnson Controls International Inc., all relating to the Peace Shield Project and referred to collectively as the “Peace Shield Contracts”;
  - (ii) the “Inventory”, which shall include all tangible personal property normally included in inventory;
  - (iii) the “Intellectual Property”, which shall include patents, patent applications, copyrights, copyright applications, mask works, mask work registrations, inventions, technology, know-how, trademarks, trademark applications, service marks, tradenames and logos, corporate names, trade secrets or other proprietary rights, technical notes, lab notes, industrial design applications, rights to products under development, and computer software (transferred with source code and available documentation for software owned by Seller);
  - (iv) the “Personal Property”, which shall include all machinery, parts, equipment, supplies, furniture, computer hardware, automobiles and vehicles and other tangible personal property;
  - (v) accounts receivable;
  - (vi) the “Records”, which shall include originals or duplicate copies of all books of account, general ledgers, sales invoices, accounts payable and payroll records, customer lists, supplier lists, reports, correspondence, sales and promotional literature, engineering lab books production records, inventory and sale records; and
  - (vii) goodwill of the Business, together with the exclusive right of Buyer to represent itself as carrying on the Business in continuation of and in succession to Seller and the rights to use any words indicating that the Business is so carried on.

By article 2.04 of the sale agreement, Senstar agreed to assume certain liabilities ComDev had incurred in relation to “the Business”.

10. Article 6.01 of the sale agreement required that the parties enter into a separate personnel agreement, pursuant to which employees of “the Business” were to be offered employment by Senstar effective on the closing date, at compensation levels at least comparable to those in effect immediately prior to that date. Senstar also agreed to credit transferred employees with all years of

service with ComDev and its affiliates and to assume ComDev’s liability and responsibility with respect to unpaid vacation pay, workers compensation claims and other employment related matters. Pursuant to the personnel agreement, Senstar offered employment to 40 ComDev employees. 37 accepted.

11. Article 6.04 of the sale agreement made it a condition of closing that both Control Data Canada, Ltd. and Control Data Corporation enter into a non-competition agreement. The terms of that agreement require that neither ComDev nor Control Data Corporation shall compete with Senstar by researching, designing, developing, manufacturing or selling personnel-intrusion detection products, systems or technology to customers any where in the world for a period of seven years after the closing date.

12. The sale agreement called for a payment by Senstar to ComDev of \$5,860,000.00, which was allocated among the purchased assets in the manner set out in this schedule to the agreement:

COMPUTING DEVICES COMPANY

SALE OF SECURITY SYSTEMS OPERATION

ALLOCATION OF PURCHASE PRICE AMONG THE ASSETS

Receivables	\$ 288,000
Inventory	1,909,000
Fixed Assets	
Equipment &	
Cable Manufacturing Equipment	767,000
Patents	2,196,000
Goodwill	<u>700,000</u>
	\$5,860,000

13. Prior to the sale, the manufacturing in quantity of devices developed by ComDev’s security systems department had been performed by ComDev’s manufacturing division, which was also involved in the manufacturing of other ComDev products. The agreement between ComDev and Senstar excludes from the sale “all fixed assets used in manufacturing except (i) as provided in Section 6.03 of this Agreement and (ii) manufacturing equipment used principally in the Business”. The thrust of the evidence is that few of the assets which had been used by ComDev to manufacture security systems in quantity could have been said to have been used principally for that purpose. As a result, Senstar did not acquire those items in this transaction.

14. Counsel for Senstar argues that without a manufacturing capability, the bundle of assets transferred by the sale agreement did not constitute a viable commercial operation and, hence, did not constitute a “business” within the meaning of section 63. There is no evidence or suggestion, however, that the equipment necessary to manufacture the ComDev products is particularly hard to obtain nor, indeed, that there would be any difficulty in contracting out the manufacture of these products. Counsel for the respondent acknowledges that the patents and technical expertise transferred by the agreement were the essential elements of the commercial activity which centred on ComDev’s security systems products. We are not persuaded that the exclusion from the sale of manufacturing equipment not unique to the production of these products in any way detracts from the otherwise very strong character of the transaction as a “sale of business” within the meaning of section 63 of the Act.



15. The respondent's other main argument was that what might otherwise appear to be a sale of part of ComDev's business to Senstar should not be so characterized when the assets purchased were intended to be and came to be used by Senstar in its own similar, pre-existing business. Reference was made to paragraph 19 and following of the Board's decision in *Grand Valley Ready Mixed Concrete Supply Limited*, [1981] OLRB Rep. June 663. In that decision, and in other decisions referred to in it, the Board found that a sale or transfer of physical assets only between two employer engaged in similar businesses did not constitute a sale of part of the sellers business within the meaning of section 63 when the assets sold were peripheral or incidental to the seller's business and there was no accompanying transfer of customer lists, accounts receivable, sales contracts or goodwill and no undertaking by the vendor not to compete with the purchaser. The situations dealt with in those decisions are clearly distinguishable from this one. The transaction here does include a transfer of customer lists, accounts receivable, sales contracts and goodwill, as well as an undertaking by the vendor and its corporate relative not to compete with the purchaser in the market formerly served by the "Business" which was the subject of the sale agreement. Senstar sought both to protect and enlarge its business by obtaining as a going concern and continuing ComDev's similar business. In so far as it was feasible to do so, the transaction contemplated Senstar's stepping into the shoes of ComDev in ComDev's relationship with its existing customers. It naturally planned to rationalize the two operations and integrate the ComDev product lines with its own, and the evidence is that this is being done.

16. That this sort of situation can involve a sale of business to which subsection 2 or 3 of section 63 would otherwise be applicable is apparent from the language of subsection 6 of section 63, which provides that:

(6) Notwithstanding subsections (2) and (3), where a business was sold to a person who carries on one or more other businesses and a trade union or council of trade unions is the bargaining agent of the employees in any of the businesses and such person intermingles the employees of one of the business with those of another of the businesses, the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (a) declare that the person to whom the business was sold is no longer bound by the collective agreement referred to in subsection (2);
- (b) determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) declare which trade union, trade unions or council of trade unions, if any shall be the bargaining agent or agents for the employees in such unit or units; and
- (d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.

Subsection 6 recognizes that the purchaser of a business may have a pre-existing business. Subsection 2 or 3 of section 63 will preserve bargaining rights with respect to those employees of the successor who are employed by it in the business it purchased by the predecessor. These are to be distinguished from persons employed by the successor in its pre-existing business. The focus is not on whether any particular employee of the successor was previously employed by the predecessor, it is on identifying the business in which the successor employs the employee. When an employer purchases a competitor's business and integrates that business with a similar pre-existing business, those employed in the purchased business may become so intermingled with those engaged in the pre-existing business that the distinction contemplated by subsection 2 and 3 of section 63 becomes difficult or impossible to maintain. Subsection 6 was intended to deal with that sort of situation.

The fact that the predecessor's business is so similar to the purchaser's pre-existing business as to make it hard to distinguish the two after the alleged sale is no basis for a conclusion that there has been no sale of the predecessor's business to the successor.

17. We are satisfied that the transaction between ComDev and Senstar was a sale of a business within the meaning of subsection 2 of section 63 of the Act. We turn, then, to the question whether the bargaining rights preserved by that section can extend to any of those now employed by Senstar.

18. When the sale occurred, ComDev and SEAC were parties to a collective agreement ("the SEAC/ComDev agreement") with effect from November 1, 1987 to October 31, 1989. Articles 2:01 and 2:04 of the agreement provided:

#### ARTICLE 2 - RECOGNITION

- 2.01 The Company recognizes the "Salaried Employees Alliance of ComDev" as the sole Collective Bargaining Agent for *those employees who are based in the greater Ottawa Area*, who are covered by job descriptions for the following classifications:

##### PROFESSIONAL TECHNICAL

Junior Engineer  
Intermediate Engineer  
Engineer  
Senior Engineer

##### PROFESSIONAL ADMINISTRATIVE

Junior Contract Administrator  
Intermediate Contract Administrator  
Contract Administrator  
Senior Contract Administrator

Junior Program Analyst  
Intermediate Program Analyst  
Program Analyst  
Senior Program Analyst

Junior Programmer  
Programmer  
Programmer/Analyst  
Systems Analyst  
Intermediate Procedures Analyst  
Technical Support Analyst  
Data Base Analyst

Junior Estimator  
Intermediate Estimator  
Estimator  
Senior Estimator

Excluding all employees who are:

- (a) Classified as Field Representatives
- (b) Classified in other job classifications not represented by SEAC defined above, except in accordance with 2:04 below.
- (c) Employees hired specifically for assignment to sites not controlled by the Company.

- 2:04 Any additions to Company job classifications where the work is covered by Article 2:01 or changes to the list of job classifications in Article 2:01 or the work being performed therein, shall be mutually agreed to by both parties. In the event the parties cannot reach mutual agreement, the dispute will be subject to the grievance and arbitration procedure. Copies of any new job titles or job descriptions, if any, will be provided to SEAC for its use.

[emphasis added]

The respondent's facilities are located at Carp, Ontario, in the Township of West Carleton. The respondent contends that Carp does not fall within "the greater Ottawa Area" and that, therefore, it has no employees to whom bargaining rights preserved by subsection 2 of section 63 might extend. Counsel initially argued that this is a sufficient basis for dismissal of the application. He acknowledged, however, that the question whether the applicant has bargaining rights for employees of the respondent "based in the greater Ottawa Area" might not be necessarily turn on whether there were any such employees at the time of the application. The question of the geographic scope of the bargaining rights preserved by section 63(2) does, however, go to whether there has been intermingling within the meaning of subsection 63(6) and to the formulation of a voting constituency for the purpose of any representation vote conducted pursuant to that subsection.

19. The phrase "the greater Ottawa Area" is not a legal term of art. The City of Ottawa is a legal entity. Carp is not in the City of Ottawa, nor is Bells Corners, the location of the main facilities of ComDev to which the SEAC/ComDev agreement clearly was intended to and did apply. Carp and the Township of West Carleton do fall within the Regional Municipality of Ottawa-Carleton, which was established by statute several years before ComDev and SEAC entered into their first collective agreement in 1975. Counsel for the respondent argues that if the parties to that agreement had intended to cover the Regional Municipality of Ottawa-Carleton, they would have used those words. *The National Capital Act*, R.S.C. 1985, c. N-4, established and continues a National Capital Region which takes in portions of Ontario and Quebec, including the City of Ottawa and Bells Corners but excluding Carp. Counsel noted that "National Capital Region" had been substituted for "greater Ottawa area" in post-sale notions between SEAC and ComDev, and argued that this was the most sensible interpretation of "greater Ottawa area". Counsel for the respondent also referred to the 1988/89 edition of a commercial publication entitled "Greater Ottawa City Directory", which covers the City of Ottawa as well as Vanier, Rockcliffe Park and those portions of Gloucester and Nepean adjacent to the City of Ottawa. Bells Corners is in Nepean.

20. We were provided with two maps from which the relative positions of Carp, Bells Corners, the City of Ottawa and other relevant locations may be ascertained. Counsel for the respondent also asked that we "take a view" of Bells Corners, Carp and the intervening rural countryside. We declined his request. We understood from the witnesses that Carp and a good deal of the countryside between it and Bells Corners is rural in nature. It did not appear to us that taking a view of that countryside would assist us in understanding what SEAC and ComDev might have meant by the words "in the greater Ottawa area" when they first agreed to the use of those words in 1975.

21. The applicant called two witnesses who had been involved in the negotiation of the first agreement between SEAC and ComDev in 1975. Edward R. Barrett had acted in those negotiations as Director of Industrial Relations for ComDev. Graham Wright had been one of SEAC's representatives in those original negotiations. Both witnesses agreed that during those negotiations there were no discussions between the parties about the precise geographic boundaries of "the greater Ottawa Area".



22. Both parties had been aware in 1975 that ComDev owned a facility in Stittsville, Ontario at which engineers had been employed until one or two years previously. Mr. Wright testified that in discussions among themselves at the time, the SEAC negotiating team had concluded that "the greater Ottawa Area" included Stittsville. They saw the phrase "the greater Ottawa Area" as distinguishing Control Data's ComDev operations in the Ottawa area from other Control Data operations like those in Mississauga, Ontario. Mr. Wright said his personal understanding was that anything within commuting distance of Ottawa would be covered, but acknowledged that there was no specific discussion of this at the bargaining table.

23. Mr. Barrett testified that in agreeing to the phrase "the greater Ottawa Area", he and ComDev would certainly have had Stittsville in mind, as the company had property there. He noted that prior to 1975 the company had also had operations in the "east end of Ottawa" farther to the east of Bells Corners than Stittsville was to the west. He observed that ComDev's business involved light manufacturing which could easily be set up in any space. He felt the phrase "the greater Ottawa Area" would certainly have been thought to extend to include locations as far from Bells Corners as Stittsville and Carp.

24. When it negotiated its first collective agreement with SEAC, ComDev was already party to a collective bargaining relationship with another trade union called the Employee Association Computing Devices Company. Counsel for the respondent put before us the recognition clauses from various of the collective agreements between ComDev and that Employee Association. The agreement covering the period December 1, 1961 to November 30, 1962 covered "Employees in its number one and two plants located at Bells Corners, Township of Nepean, Ontario." The recognition clauses in the two agreements covering the period December 1, 1962 to September 30, 1966 used the language just quoted and added to it the words "and also at the Aerophysics Range near Stittsville, Ontario." The agreement covering the period October 1, 1966 to September 30, 1968 recognized the Association as collective bargaining agent "for those employees located in plants or sites controlled by the company in the greater Ottawa area and Stittsville, Ontario." We were not provided with a copy of the collective agreement in effect in 1975, but the most recent collective agreement between ComDev and the Employees Association uses the same language as appears in the 1966-68 agreement.

25. Counsel for the respondent invites us to conclude from this that "the greater Ottawa area" must have been something which excluded Stittsville. He established by his cross-examination of them that both Mr. Barrett and Mr. Wright would have had some awareness in 1975 of the collective agreement then in effect between ComDev and the Employees Association when they negotiated the first SEAC collective agreement. He asked Mr. Barrett whether the Employee Association agreement had served as a model for the negotiations with SEAC. Mr. Barrett said it had not. Counsel for the respondent did not put the language of the contemporaneous Employees Association agreement to either Mr. Barrett or Mr. Wright. They were not asked how they could have felt the words "the greater Ottawa area" included Stittsville in the face of the language used in the Employee Association agreement. They were thus deprived of the opportunity to answer an argument which challenged the reasonableness of their understanding of the language they had used, and the Board was deprived of the benefit of whatever answer they might have given had counsel put to them the point he later argued to us. In the circumstances, we do not think that the language used in the Employee Association agreements can weigh in favour of any particular interpretation of the language of the first agreement between SEAC and ComDev.

26. While the meaning of the words "the greater Ottawa Area" was never the subject of explicit agreement or discussion between SEAC and ComDev at the bargaining table, it is apparent that neither party intended SEAC's bargaining rights to be limited to the particular location at

which ComDev then employed persons in the job classifications referred to in the recognition clause. Both parties contemplated the possibility that ComDev might in future employ persons in such job classifications as far from Ottawa as Stittsville. The fact that they used the vague phrase "greater Ottawa Area" rather than a well defined one like "Regional Municipality of Ottawa-Carleton" or "Township of Nepean" suggests that neither party was particularly concerned to place precise geographic limits on the scope of SEAC's bargaining rights.

27. Counsel for the respondent argued that the scope should be limited to urban or built-up areas by way of analogy with the commercial directory to which he drew our attention. We do not accept that argument. There is no evidence that such a directory existed or was known to or referred to by SEAC and ComDev in 1975. Moreover, the directory uses the word "City" in its title; the parties to the SEAC/ComDev agreement did not use the word "City" or any other language limiting the phrase "greater Ottawa Area" to the urban or built-up area around the City of Ottawa.

28. We also reject the suggestion that the amendment SEAC and ComDev made to their recognition clause after the sale can be of any assistance in interpreting the unamended clause. The respective understandings of SEAC and ComDev of the meaning of the phrase "the greater Ottawa Area" would only be one of several factors which might have influenced their agreement to adopt a more certain description of their agreement's geographic scope.

29. From the maps with which we were provided, it appears that Stittsville and Carp are roughly (within 10 to 15 per cent) the same distance "as the crow flies" from the Parliament buildings in Ottawa, although Carp is noticeably farther than Stittsville by road. In all the circumstances, we are satisfied that the parties to the original SEAC/ComDev agreement intended the words "in the greater Ottawa area" to be interpreted liberally, and that on an appropriately liberal interpretation "the greater Ottawa area" includes Carp, Ontario.

30. Prior to July 19, 1989, the constitution of SEAC only contemplated membership by employees of ComDev. When it became apparent that some of the employees it represented were to become employees of Senstar, it was proposed that the constitution be amended to permit membership by employees of companies other than ComDev. Amendment is provided for in Article 10 of SEAC's constitution:

ARTICLE 10, AMENDEMENTS TO CONSTITUTION AND BY-LAWS

- (a) Proposed amendments to this constitution and By-Laws must be submitted in writing to the Secretary. The proposed change must be posted prior to a general meeting for at least 10 working days.
- (b) Ratification of any such change shall be either by:
  - (i) A vote at a meeting where at least 50% of the membership cast ballots which are not abstentions or spoiled
  - (ii) Where the conditions of (i) above are not met, a ballot will be held on Company premises.
- (c) Ratification will be by a two thirds majority vote under the conditions outlined in para (b).

A general meeting of members was called for July 27, 1989, to consider the proposed amendment to the constitution's membership provision. Less than half of the total membership attended. The amendment was then the subject of a ballot held on the company's premises. The ballots were

counted sometime on or after August 4, 1989. 123 of the ballots cast favoured the amendment; 18 ballots opposed it.

31. It is common ground that notice of the general membership meeting was given only 10 calendar days prior to the date on which it was held. The respondent challenged the applicant to prove that notice of the proposed constitutional amendment had been given at least 10 working days prior to the meeting, as required by the applicant's constitution. The applicant rose to the challenge. Francis Wormleighton testified that she posted a document containing the text of the proposed amendment at least 10 working days prior to the general membership meeting at which it was considered. She could not be sure whether it was posted exactly 10 days prior. She remembers thinking she had made the deadline without much time to spare. In cross-examination, she acknowledged that a copy of the notice in her possession bore a note in her handwriting indicating that it had been posted on July 16, less than 10 working days prior to the meeting. Ms. Wormleighton testified that she put that note on the document some time after the meeting was held and that it was clearly inaccurate, as the July 16th had been a Sunday and she had never been at work on a Sunday.

32. Counsel for the respondent invited us to conclude that the notice requirement of the applicant's constitution had not been complied with in the attempt to amend it so as to permit membership by employees of companies other than ComDev. As a result, he argued, employees of Senstar were not eligible for membership in SEAC. Even if the amendment had been effective, he argued, it had only become effective sometime after August 2, 1989, so that employees of Senstar had not been eligible for membership in SEAC on the day of sale of business occurred. Counsel for the respondent argues that section 63 should not be so interpreted as to give a trade union bargaining rights for employees for whom it could not be certified.

33. Counsel for the respondent is inviting us to read into section 63 words which are simply not there. Section 63 says that a trade union will continue to have bargaining rights for employees in a particular business even if the identity of their employer changes. The section does not say that this is so only when the trade union can show that it could have been certified to represent the employees of the successor in the sold business. One of the main points of the section is that a trade union should not have to satisfy the certification requirements of the Act in those circumstances. Even if the proposition advanced by counsel for the respondent could somehow be read into section 63, it is by no means clear that the unamended provisions of the SEAC constitution would have stood in the way of its being certified, bearing in mind the deeming provisions of clause 1(1)(i) and subsection 103(4) of the Act.

34. It is noteworthy that no employee affected by this application complains about the state of SEAC's membership requirements, nor is there any evidence that any member of SEAC challenges the validity of the proceedings which its Executive says resulted in the amendment of the membership provisions of its constitution. It might be argued that the failure to give a full 10 working days notice of the proposed amendment part of the general meeting called to consider would not be a substantial defect when it is not claimed that a vote conducted at that meeting brought the amendment into effect. In any event, while the evidence of compliance with the notice provisions is less than overwhelming, there is no evidence to refute it. If the question whether there has been compliance is relevant to the outcome of this application, we are prepared to find that there was such compliance.

35. Accordingly, we find that the transaction between ComDev and Senstar which closed on August 2, 1989 was a sale of business to which subsection 63(2) of the Act applies. From and after that date, therefore, Senstar was bound by the collective agreement between SEAC and



ComDev as though it had been a party thereto. Having regard to the agreement of the parties, we find that Senstar has intermingled employees in the business it purchased with employees in the business it was carrying on at the time of the purchase. The employees concerned constitute a single appropriate bargaining unit in which we direct that a representation vote be conducted. The voting constituency for the purpose of that representation vote shall consist of

all employees of the respondent based in the greater Ottawa Area, who are covered by job descriptions for the following classifications:

PROFESSIONAL TECHNICAL

Junior Engineer  
Intermediate Engineer  
Engineer  
Senior Engineer

PROFESSIONAL ADMINISTRATIVE

Junior Contract Administrator  
Intermediate Contract Administrator  
Contract Administrator  
Senior Contract Administrator

Junior Program Analyst  
Intermediate Program Analyst  
Program Analyst  
Senior Program Analyst

Junior Programmer  
Programmer  
Programmer/Analyst  
Systems Analyst  
Intermediate Procedures Analyst  
Technical Support Analyst  
Data Base Analyst

Junior Estimator  
Intermediate Estimator  
Estimator  
Senior Estimator

Excluding all employees who are:

- (a) Classified as Field Representatives
- (b) Classified in other job classifications not represented by SEAC defined above, except in accordance with 2:04 below of the collective agreement between Computing Devices Company and The Salaried Employees Alliance of ComDev dated November 24, 1987.
- (c) Employees hired specifically for assignment to sites not controlled by the Company.

For purposes of clarity, the phrase "the greater Ottawa area" includes the respondent's existing facilities in Carp, Ontario.

36. All those employed in by the respondent in the voting constituency on the date of this decision who are so employed when the vote is conducted will be eligible to vote. Voters will be asked whether or not they wish to be represented by the applicant in their employment relations with the respondent.

37. Unless the parties agree on the substitution of some other phrase for the phrase "in the greater Ottawa area", the words we have used to describe the voting constituency will be the words used to describe the appropriate bargaining unit in any declaration under subparagraph 63(6)(c) following the conduct of the vote.

38. We direct that the parties meet with a Labour Relations Officer to be assigned by the Board's Manager Field Services, at a place and time appointed by that Labour Relations Officer, to discuss arrangements for the conduct of the vote we have directed.

---

**3472-84-JD** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 463, Complainant v. Labourers' International Union of North America, Local 597 and **Steen Contractors Limited**, Respondents v. Milne and Nicholls/Vanbots Joint Venture, Intervener #1 v. Labourers' International Union of North America Ontario Provincial District Council, Intervener #2 v. Valentine Enterprises Contracting, a Division of Valentine Developments Limited, Intervener #3 v. Metropolitan Toronto Sewer and Watermain Contractors Association, Intervener #4 v. Ontario General Contractors Association, Intervener #5 v. The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Intervener #6 v. Canadian Automatic Sprinkler Association, Intervener #7 v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union 853, Intervener #8 v. International Brotherhood of Electrical Workers Construction Council of Ontario, Intervener #9

**Construction Industry - Sector Determination - Installation of storm sewer pipe and catch basins on private property - Characteristics of excavation work a function of purpose of excavation - End use being sewer - Work characteristics distinct and same irrespective of installation on private property - Work typically performed by speciality contractors - Statutory scheme not requiring Board to exercise discretion with view to enlarging ICI sector - Work within sewers and water-mains sector**

**BEFORE:** *Harry Freedman*, Vice-Chair, and Board Members *W. Gibson* and *C. A. Ballentine*.

**APPEARANCES:** *L. C. Arnold* for the complainant; *A. M. Minsky*, Q.C. for Labourers' International Union of North America, Local 597 and Labourers' International Union of North America Ontario Provincial District Council; no one appearing for Steen Contractors Limited, Ontario General Contractors Association, Milne Nicholls/Vanbots Joint Venture, and Canadian Automatic Sprinkler Association; *Richard J. Charney* for Metropolitan Toronto Sewer and Watermain Contractors Association and Valentine Enterprises Contracting; *A. J. Ahee* and *Lionel G. Clarke* for The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and

Canada Local Union 853 and International Brotherhood of Electrical Workers Construction Council of Ontario.

**DECISION OF THE BOARD;** November 2, 1989

1. One of the issues that the parties to this proceeding disagreed over was whether the work of installing storm sewers and manholes within the property lines and outside the perimeter of buildings at the General Motors stamping plant project in Oshawa came within the industrial, commercial and institutional sector of the construction industry. The Board in this decision determines that issue.
2. The complainant filed a complaint under section 91 of the *Labour Relations Act* over the assignment of work described as the handling and installation of storm sewer pipe and catch basins between the building and property lines at the General Motors stamping plant project - Oshawa (not including excavation and back filling), to members of the respondent Local 597. By decision dated April 3, 1985, the Board issued an interim order on the parties' agreement directing that a composite crew made up of members of the complainant and the respondent Local 597 be assigned to perform the work in dispute. Subsequently, after the work in dispute had been completed, the complainant sought leave of the Board to withdraw the complaint. By decision dated May 15, 1986, [1986] OLRB Rep. May 677, the Board refused to consent to the withdrawal of the complaint. The Board noted in that decision that these proceedings would continue, but that the complainant was free to withdraw from them and leave the matter to be decided based on the evidence and representations made by the remaining parties. The complainant continued as an active party in this proceeding.
3. When the hearing of this matter resumed, the Board ruled, by decision dated January 9, 1987, [1987] OLRB Rep. Jan. 137, that it would first hear and determine into which sector of the construction industry the work in dispute fell. As a result, a number of parties were subsequently added as interveners in the proceeding by decision dated October 30, 1987.
4. Pursuant to the Board's decisions of January 9, 1987 and October 30, 1987, the Board received extensive and detailed evidence and representations over numerous days of hearing and lengthy written argument following the conclusion of the hearings.
5. The position of the parties over the sector issue can be stated simply: the complainant and interveners #6, 8 and 9 asserted that the work in dispute came within the industrial, commercial and institutional sector of the construction industry; the respondent Local 597 and interveners #2, 3, 4 and 5 asserted that the work in dispute came within the sewers and watermain sector of the construction industry. The respondent Steen Contractors Limited and interveners #1 and 7 did not participate in the hearings nor did they submit written argument relating to the sector issue.
6. The original description of the work in dispute involved the handling and installation of storm sewers and catch basins within the property but outside the buildings at General Motors in Oshawa. The evidence established that the actual work in dispute did not involve catch basins, but rather manholes. The difference between the original description of the work in dispute and the evidence as to the actual work in dispute was not material to the resolution of the sector issue.
7. Steen Contractors Limited contracted with Valentine Enterprises Contracting for the supply and installation of outside storm sewers and manholes, which included excavating trenches and providing the necessary supports for the safe installation of the storm sewers. The storm sewers were to be connected to existing sewer lines on General Motors' property. The storm sewer pipe to be installed by Valentine consisted of 225 feet of 15 inch diameter concrete pipe. It was



placed in trenches to a depth of between 10 feet and 15 feet from approximately 5 feet from the building and connected to an existing 36 inch diameter storm sewer pipe. There were three man-holes also installed along that length of pipe.

8. The work that is the subject of the complaint under section 91 did not include the excavation and backfilling aspects of the sewer installation. Nevertheless, the parties adduced considerable evidence above the excavating and trenching work associated with sewer construction.

9. Counsel for the complainant sought to introduce evidence, through cross-examination, about the work related to the installation of underground storage tanks at the General Motors project. The nature of that cross-examination would have explored, among other things, the nature of the excavation work associated with that kind of underground installation. The Board ruled that that line of cross-examination was irrelevant for reasons set out in its decision of December 16, 1987. The Board also stated clearly in that decision that this proceeding and decision was not going to establish the line of demarcation between the sewers and watermains sector and the industrial, commercial and institutional sector, but rather would only decide the sector into which the work in dispute came.

10. The evidence made it abundantly clear that the characteristics of excavation work associated with sewer construction varied depending on the size of pipe and the depth and location of the trench. The evidence concerning excavation work related to firemain and watermain construction also established that the work characteristics of such excavation work varied, although not to the same degree as sewer excavation, because of the smaller range of sizes of pipe and the location and depths of the trenches into which those mains were placed. Watermains and firemains, when laid in trenches excavated for those lines only, were generally closer to the ground surface than sewer pipe and because such lines involved generally smaller diameter pipe, the excavation work associated with watermains and firemains generally involved shallower and narrower trenches than sewer pipe installation.

11. It seemed clear to us that the characteristics of excavation work are a function of the purpose of the excavation. We assume for purposes of this decision that excavation work for underground electrical conduit, storage tanks and process piping will also vary depending on the size of the item or pipe to be installed and the depth and location of the installation and that some characteristics of that excavation work are similar or identical to excavation work for sewer and watermain installation.

12. The Board noted in its December 16, 1987 decision that the installation of underground fuel storage tanks was not work within the sewers and watermains sector. Given the location and purpose of that construction on private property in connection with an industrial facility, we assumed that that type of construction work came within the industrial, commercial and institutional sector. Therefore, the excavation work associated with that installation would also come within that sector. It would be anomalous to conclude that excavation work carried out to install an underground fuel storage tank and the actual installation of that fuel storage tank are in different sectors of the construction industry.

13. It appeared to us that excavation work characteristics may differ depending on the purpose of the excavation. Nevertheless, excavation work for different purposes may share some of the same characteristics. While excavation work to install process piping and electrical conduit may be similar to the excavation work associated with the installation of firemains, watermains and sewers, it is not only the characteristics of the excavation work that determines the sector of the construction industry into which the work falls.

14. Section 117(e) of the *Labour Relations Act* defines “sector” as a division of the construction industry as determined by work characteristics and includes the industrial, commercial and institutional sector, the residential sector, the sewers and watermain sector, the roads sector, the heavy engineering sector, the pipeline sector and the electrical power systems sector. “Construction industry” is defined by section 1(1)(f) of the Act as *businesses* that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, *sewers, water* or gas mains, pipelines, tunnels, bridges, canals or other works at the site thereof. Sections 117(e) and 1(1)(f), when read together, suggest that certain businesses may, by undertaking particular kinds of work, exhibit common characteristics, and when engaged in work specifically mentioned in both sections 1(1)(f) and 117(e) are likely to come within the sector that describes the work performed. While businesses which undertake activity referred to in section 1(1)(f) may fall into more than one sector of the construction industry depending on the construction activity undertaken, it is significant, in our view, that sewers and watermain are specifically mentioned in both sections 1(1)(f) and 117(e).

15. The Board in *Heavy Construction Association of Toronto*, [1973] OLRB Rep. May 245 commented on the similarity of terms appearing in what is now sections 1(1)(f) and 117(e). The Board noted at 248:

Although certain terms appearing in the definition of construction industry also appear in clause (e) of section 106 [now 117(e)], the relationship between these two definitions is not sufficient to afford any assistance in interpreting the meaning of the term sector.

It seems to us that the use of the term “work characteristics” in section 117(e) and the appearance of identical terms in both sections 117(e) and 1(1)(f) does suggest that work characteristics may also include the characteristics of the particular businesses that are undertaking the work referred to in both sections. We believe that it is relevant to our determination of sector to examine the characteristics of the particular segment of the businesses that are engaged in the kinds of work described in section 1(1)(f) and which are specifically identified as a sector of the construction industry in section 117(e) and whether those businesses have distinct work characteristics.

16. The Board in *West York Construction Limited*, [1983] OLRB Rep. Dec. 2132, in determining a sector issue, relied on the practice that had developed with residential apartment builders. It also noted that the General Contractors Association, which represented general contractors engaged in industrial, commercial and institutional construction, did not oppose using the practice that had developed with respect to classifying mixed use buildings as a way of defining the sector into which construction of a mixed use building came. It therefore appeared to us that an established industry practice is certainly relevant, and may be significant, in assessing into which sector of the construction industry certain work falls. Having reached that conclusion, we also adopt the caution expressed by the Board in *West York Construction Limited* at paragraph 26:

This is not to say that local area practices or local agreements will always be determinative. Most projects clearly fall within one sector or another, and a local practice or agreement cannot alter that fact. Accordingly, an agreement to regard a clearly ICI project such as a shopping plaza or a school as residential would not find much favour with the Board. Rather, it is only with respect to those relatively small number of projects which fall into the “grey area” between the sectors that a widely accepted local practice or agreement might assist in deciding how the project should be characterized. We would caution, however, it is possible that for one reason or another other relevant factors might be persuasive enough to cause the Board to conclude that a local practice or agreement should not be followed. Each situation will have to be determined on the facts involved.

17. The evidence established that the actual work of installing the sewers and manholes that were the subject of dispute was virtually identical to the work of installing the same type of sewers

in a subdivision or under a public road. The differences that could arise related principally to the work associated with the excavation for the sewers. Those differences were not exclusively a function of whether the installation was within or outside of private property lines, but rather were dependent upon the size of the sewer, and the depth of the required trench. Other conditions affecting work characteristics, such as soil conditions, obstacles and underground services including gas mains, electrical conduit and telephone lines may exist on private property or under public roads.

18. Counsel for the complainant, joined by counsel for the interveners who supported the complainant, both argued that the industrial, commercial and institutional sector was primary, and therefore the Board should not permit any encroachment on the scope of that sector. The industrial, commercial and institutional sector is but one of several sectors of the construction industry. While it is the subject of a specific legislative scheme that sets it apart from the other sectors, it does not follow that the Board should define the line between sectors with a view to enlarging the reach of the industrial, commercial and institutional sector.

19. The approach taken by the Board in defining the sector into which work falls has been consistent. In *Heavy Construction Association of Toronto, supra*, the Board analyzed the definition of sector at 249-50:

Thus, it is clear that when the Legislature enumerated the specific sectors set out in the definition it must be taken to have applied the test set out in that section when enumerating the sectors named therein. That is to say the enumerated sectors are divisions of the construction industry determined by work characteristics. Thus, the enumerated sectors give us a key to interpreting the expression "work characteristics" and in turn once the expression work characteristics is clarified this will provide assistance in the correct interpretation of each of the enumerated sectors.

An examination of the enumerated sectors in clause (e) of section 106 [now 117(e)] leads to the conclusion that for all but one of the sectors listed the names given to these divisions of the construction industry relate to the use which is ultimately made of the construction. At first this may appear to be somewhat of a puzzle in that the connection between the use of the construction and the work characteristics may not be obvious. Open [sic] examination, however, it becomes clear that the use that is ultimately made of the construction will to a large extent determine the task or the work to be performed at the construction site. The task in turn will have certain characteristics which make that project distinguishable from other types of construction. Thus, each of the sectors enumerated, by focusing on the different end uses of the construction distinguishes one type of construction from other types of construction on the basis of peculiar tasks which are common to that type of project. The work characteristics which distinguish one sector from the other sectors of the construction industry may be shown in terms of the type of problems to be dealt with at the job site, the types of solutions resorted to at certain job sites, the material used, the relative importance of various specifications, the variety of skills and trades, and certain characteristic relations with employees. This list of characteristics is not to be thought of as exhaustive, but as examples of particular characteristics which differ between the various sectors enumerated in the Act.

Having given a meaning to the test for determining sectors on the basis of work characteristics we can now turn to use this meaning as a tool for obtaining the criteria which separate one sector from another sector of the construction industry. However, as noted above there is one sector which unlike the other sectors enumerated in the Act does not refer to the end use made of the construction in that sector. This is the heavy engineering sector, which is the subject matter of this application. The name of this sector comes from the view that the division of the construction industry with which it is concerned has distinct peculiarities. As the name implies the problems faced in such construction projects are primarily engineering problems as distinct from design or architectural problems. Thus, for instance, these are projects in which it is more important that they serve their intended function rather than be attractive. The other characteristic of construction in this sector is that it involves the use of "heavy equipment". That is equip-



ment which is capable of lifting, for example, heavy steel or concrete beams or equipment that is capable of moving huge amounts of earth, stone or concrete. Perhaps the classic example of a heavy engineering project is the construction of a large bridge.

20. That approach was adopted by the Board in *Ecodyne Limited*, [1979] OLRB Rep. July 629.

21. The dispute over sector arises in this case because the work in dispute was carried out on private property. Nevertheless, as indicated above, the work characteristics of the work in dispute were virtually identical whether carried out on private property or under existing roads.

22. Counsel for the complainant also suggested that to find the work in dispute came within the sewers and watermains sector would fractionate one construction project into different sectors. The difficulty with counsel's argument arises from the concept of a construction project. Construction projects may be large or small, may carry on for only days or weeks or may extend over many months or years. Construction projects will have different phases, calling for different kinds of work to be done. In our view, all of the work done on a particular construction project, however that term is defined, need not necessarily come within the same sector of the construction industry. This is not to say, however, that the actual construction of, for example, a mixed use commercial/residential building will involve work that is within the residential sector for the residential part of the building and the industrial, commercial and institutional sector for the balance. That problem was noted in and commented upon in *West York Construction Limited*, *supra*, at 2141:

Before considering which sector the two projects in question actually came within, we would note that no party argued in favour of treating one part of the project as residential and another part as ICI. Indeed, it appears to be accepted that such an approach would not be feasible. In this regard, various witnesses referred to problems that would arise in bidding a job and then subletting the work if part was viewed as residential and part as ICI. There would also be difficulties in deciding how to characterize the initial excavation work and installation of underground services. Witnesses from both Van Bots and West York also voiced a concern that if the lower levels of a building were built by an ICI contractor, and the upper floors by a residential contractor, it would be difficult to establish which contractor was responsible for problems which might develop with respect to the upper floors, in that the root of the problem could lie in the manner in which the lower floors were constructed.

We note parenthetically that the Board in that case seemed to suggest that underground services and excavation would, of necessity, come within the same sector as the building. That may have been the situation in that case, but the Board did not have before it the same issue that is before us. Furthermore, the underground services that the Board may have had in mind in that comment might only have been underground connections within or adjacent to the building lines since both building projects were located in Toronto and may have already had existing sewer and water services in place prior to construction.

23. Where the construction work for a particular project is closely integrated, as would be the case in the construction of a building, then all of the work of that project would fall within the same sector. Where however the work to be done is distinct, the responsibility for it is clearly severable and where such work appears to patently fall within one of the enumerated sectors of the construction industry, there is not any compelling reason to distort the concept of sector in order to find that all of the work on a project falls within the same sector.

24. The installation of sewers and watermains in the construction industry has been carried out largely by specialty contractors who hold themselves out as sewer and watermain contractors. Their work involves principally the excavation and installation of sewers and watermains under

roads, for subdivisions and on land that will be developed and used for residential and industrial, commercial and institutional construction. A portion of their work also involves sewer and watermain installations on private property outside of building lines, generally on large industrial sites. Sewer and watermain contractors will also infrequently perform excavation and installation of sewers and watermains, drains and other piping within building lines as well as other kinds of excavation work.

25. Mechanical contractors, who are principally engaged in the construction and installation of mechanical services for industrial, commercial and institutional buildings and building sites will also, on occasion, perform sewer and watermain installation within private property outside of building lines. Mechanical contractors will rarely, if ever install sewers and watermains under public roads or in subdivision road allowances. Generally, mechanical contractors are retained to do sewer and watermain installation on private property as part of a larger overall mechanical contract for the plumbing and drain work for a building. Even in such cases, the excavation for the exterior sewers and water lines on a project may be subcontracted to an excavating contractor who is often also a sewer and watermain contractor. Indeed, the work assignment dispute arose in this case because the mechanical contractor subcontracted both the excavation and installation of the sewers to Valentine Enterprises Contracting after being awarded that work as part of its mechanical subcontract from the general contractor.

26. Unionized sewer and watermain contractors in Ontario have collective bargaining relationships with the Labourers International Union of North America, and one or more of its Locals, and the International Union of Operating Engineers, Local 793. Unionized mechanical contractors have collective bargaining relationships with Locals of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and perhaps another trade such as the Sheet Metal Workers.

27. In cases where a sewer and watermain contractor has installed sewers and water lines on private property but outside building lines, the award of that work has generally come from the general contractor, not the mechanical contractor. Often, the general contractor may separate outside sewer and watermain installation from interior plumbing and drain work. In those cases, the sewer and watermain work is almost invariably subcontracted to a sewer and watermain contractor. It appeared to us that whether outside sewer and watermain installation was part of a mechanical contract and subcontracted to a mechanical contractor or separated and awarded to a sewer and watermain contractor was the choice of the architects and engineers responsible for the construction and was based on whether outside sewer work was included in either the general contractor's or the mechanical contractor's portion of the job specifications.

28. The characteristics of the actual work in dispute did not differ because it was performed within private property lines. As one witness commented in his testimony, a sewer is a sewer is a sewer. That is, no matter where a storm sewer is installed, it retains its characteristic as a storm sewer and the work characteristics associated with its installation do not depend on whether it is on private property or under a road or road allowance.

29. We have also assumed that certain characteristics of sewer and watermain installation would be similar, if not identical, to the work characteristics of other underground installations that would come within the industrial, commercial and institutional sector. While there are similarities in some of the work characteristics, such as employee skills required in excavating, machinery and equipment used and job site problems and solutions for both the installation of underground process piping, storage tanks or electrical conduit and sewers and watermains, other work characteristics are clearly different. For example, the materials and specifications for sewer and water-

main work are quite different from the materials and specifications for other underground services. Furthermore, the collective bargaining relationships will differ if a mechanical or electrical contractor performs that work, rather than a sewer and watermain contractor. In our view the installation of sewers have some different and distinct work characteristics that separate sewer installation work from other kinds of underground service work.

30. In the *Heavy Construction Association of Toronto* decision, *supra*, the Board made clear that a sector determination depended to a great extent upon the end use of the construction. At paragraph 16 of that decision, the Board discussed its definition of the heavy engineering sector:

However, if we try to to define the heavy engineering sector in terms of the emphasis of engineering problems and the use of large scale equipment, we are confronted with the problem that these two characteristics are not sufficient to distinguish projects *which clearly fall into the other enumerated sectors*. Thus, for instance the construction of a large refinery, steel mill, power station or sewage settling basin may have these same characteristics. We are thus faced with the potential conflict that any project in any of the sectors can arguably be placed in the heavy engineering sector if the problem is an engineering problem and the equipment used is large scale or heavy equipment. Clearly, section 106(e) should not be interpreted *in a way to allow such an ambiguity* or uncertainty as to the meaning of the term "sector". The problem, however, is not difficult to overcome. As pointed out earlier, the other sectors are defined in terms of the use ultimately made of the construction. This has the clear advantage of determining the sector at the earliest stages of the project. Thus any uncertainty as to whether the project falls in one sector or another can be removed even before work has commenced at the job site. The removal of such an uncertainty is, of course, a desirable goal in labour relations and indeed the Legislature in its wisdom has seen fit to remove the uncertainty from the definition by labelling the other sectors with names designating the end use of the project.

[emphasis added]

31. In this case, the end use of the work in dispute is a sewer, albeit one that is used to carry rain water away from an industrial building. The work was performed by a sewer and watermain contractor in a manner that did not differ from the manner in which it and other sewer and watermain contractors install sewers on private property, under roads and in subdivisions. Its installation on private property did not affect the nature or quality of the work. The characteristics of that work, while similar to some characteristics of excavation work in the industrial, commercial and institutional sector, is identical to all other work that is clearly part of the sewers and watermains sector. We therefore conclude that the work in dispute was work which came within the sewers and watermains sector of the construction industry.

32. We are fortified in our conclusion by the Board's earlier determination in *Metropolitan Toronto Sewer and Watermain Contractors Association*, [1986] OLRB Rep. Oct. 1362. In that case, the Board concluded that the sewers and watermains sector included sewer work on private property to within three feet of a building line, regardless of the ultimate use of the property.

33. We also wish to emphasize that our conclusion of this issue relates only to the work in dispute, that is, the installation of storm sewers on the General Motors' property. As we noted above, other excavation work related to the installation of underground services which are not sewers or watermains does not come within the sewer and watermain sector of the construction industry.

34. Having regard to the foregoing, the Board hereby declares that the work in dispute in this proceeding comes within the sewers and watermains sector of the construction industry.

35. Should any of the parties to this complaint wish to have the merits of this work assign-



ment dispute determined, the Registrar must be advised within fifteen days of the date of the release of this decision. Otherwise it will be deemed terminated.

---

**0172-89-R United Brotherhood of Carpenters' and Joiners of America Local Union 27, Applicant v. Supreme Carpentry Inc., Respondent**

**Bargaining Unit - Certification - Construction Industry - Dependent Contractor - Employee - Board finding workers to be dependent contractors - Board declining to determine whether worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing**

**BEFORE:** *N. B. Satterfield*, Vice-Chair, and Board Members *W. N. Fraser* and *J. Redshaw*.

**DECISION OF THE BOARD;** November 28, 1989

1. This application for certification was made under the construction industry provisions of the *Labour Relations Act* on April 19, 1989. The application and reply thereto raised issues which required hearing by the Board and a hearing was scheduled for June 9, 1989 to receive the evidence and representations of the parties respecting those issues. The parties met with a Board officer on that date and resolved some of the issues and narrowed others. A decision of the Board which issued on June 9th sets out the extent of their agreement and disagreement. The parties agreed that, should the Board find there to be a unit of the respondent's employees appropriate for collective bargaining purposes, it should be a unit of carpenters and carpenters' apprentices described so as to satisfy the requirements of subsection 144(1) of the Act. They were in dispute as to whether there was more than one employee of the respondent who would fall into a unit described in those terms. Paragraph 6 of the decision, which reads as follows, sets out how the Board will deal with the issue:

6. The parties have requested the Board to authorize a Board officer to inquire into and report to the Board respecting those issues. Therefore, having regard to the agreement of the parties, a Board officer is authorized to inquire into and report to the Board on:

- (1) whether the respondent is the employer of Manuel Azevedo, Antonio Azevedo and Jose Guimaraes; and
- (2) the duties and responsibilities of Alde Panaro. [Aldo Panero]

2. The Board officer held several meetings at which he received the evidence of Manuel Azevedo and Jose Guimaraes respecting the work which they were performing for the respondent and the conditions under which they had been engaged to perform it. The Board was unable to examine Antonio Azevedo because it was unable to summons him to attend the meetings. It was reported to the Board that he was not in the country. During those same meetings the Board also received the evidence of Aldo Panero who was called by the respondent. The applicant and Supreme Carpentry Inc. (hereafter "Supreme") were represented by counsel at the meetings. Following the examination of those three persons, the parties agreed to meet with the officer again on August 28, 1989 for the purpose of receiving the evidence of other witnesses to be called by the parties. The Board officer adjourned that meeting at the request of Supreme's counsel and with

agreement of counsel for the applicant and, on their further agreement, rescheduled the meeting for September 13th. Counsel for the applicant has advised the Board that the applicant agreed to the adjournment of the meeting on conditions which included the condition that counsel for Supreme furnish applicant counsel with certain documents. Counsel for the applicant has advised the Board further that the documents were not produced.

3. The officer's meeting proceeded on September 13th as scheduled, but Supreme was not in attendance and was not represented at the meeting. The meeting had been scheduled to commence at 9:30 a.m. The officer delayed convening the meeting until after 10:00 a.m. and, when Supreme was still not in attendance and was not represented, the Board officer proceeded with the meeting and received the evidence of Luis Camara called by the applicant. When the applicant's examination of its witness was concluded, no one had appeared to represent Supreme and, there being no other evidence to hear, the officer terminated his inquiry. The officer made his report to the Board in writing on October 25, 1989 and copies of the report were sent that same date to the parties together with the Board's "Notice of Report of Labour Relations Officer" in Form 68.

4. The officer's report to the Board contains the following statement on page 2:

I was advised by Counsel for the Applicant at the meeting that he understood that Mr. White would not be attending that morning. I telephoned Mr. White who confirmed this but indicated that he thought that the Respondent would be in attendance. He also indicated that a letter outlining his position was being sent to the Board and in this letter he would be seeking an adjournment of the examinations on behalf of the Respondent.

Mr. White referred to in the quotation was counsel for Supreme. No request to adjourn the meeting scheduled for September 13th was made to the Board prior to that meeting. The Board did receive by ordinary mail on September 13th a copy of a letter bearing the date September 12, 1989 addressed from Mr. White to counsel for the applicant. The Board's copy was addressed to the attention of the officer. The first two paragraphs of the letter state as follows:

Further to my conversation with your secretary on September 11, 1989 please be advised that we have been forced to withdraw from acting on behalf of Supreme Carpentry Inc. with respect to this matter.

As I informed your secretary on September 11, an adjournment is requested of the meeting scheduled for September 13 so as to allow Supreme Carpentry Inc. to retain new counsel.

5. The Board has received written submissions from applicant counsel respecting the conclusions the Board should make on the evidence contained in the officer's report. The applicant does not request a hearing of the Board for this purpose. Supreme has neither requested a hearing nor made any submissions on the report within the time limits prescribed in the Board's notice of the report sent to the parties.

6. The applicant's first position was that the Board need not deal with the evidence in the officer's report in order to determine its application because of the conduct of the respondent. In this respect, the applicant takes the position that it was Supreme which was contending that the three persons claimed by the applicant to be in the unit of employees that would be appropriate for collective bargaining were not employees of Supreme; and, further, Supreme had abandoned its claim when it failed to attend the meeting with the Board officer on September 13th. The applicant's alternate position is that the Board should find Manuel Azevedo, Antonio Azevedo and Jose Guimaraes to be employees of Supreme employed in the proposed unit on the date of making of the application, and find Aldo Panero not to be an employee within the meaning of the *Labour Relations Act* on that date and to be excluded from the unit of employees. The Board does not find the applicant's first position tenable in the circumstances of this case and will decide the issues of

whether there is a unit of employees appropriate for collective bargaining and, if so, who are the persons who would be included in that unit, based on the evidence contained in the officer's report to the Board.

7. The Board finds it unnecessary to rely at all on the evidence given by Luis Camara at the meeting of the officer on September 13, 1989. The Board's findings of fact herein are based, therefore, on the evidence of Manuel Azevedo, Jose Guimaraes and Aldo Panero as contained in the officer's report having regard to the submissions thereon of applicant counsel and to the Board's assessment of the relevant credibility of the witnesses based on the manner in which they answered the questions put to them by the Board officer and by the parties. On that basis, where the evidence of Aldo Panero conflicts with that of the other two witnesses, the Board prefers the evidence of Manuel Azevedo and Jose Guimaraes.

8. Aldo Panero's wife Maria owns Supreme and is its secretary. Panero is a director of the company and its president. Panero and his son Joe work on Supreme's jobs. They also run its business and between them decide which contractors will work for it. Joe was not at work on Supreme's job sites affected by this application on the date of its making. Supreme claims that Aldo Panero was. On the facts before the Board, even if he was at work on the date of making of the application, the Board finds that Aldo Panero is not an employee within the meaning of the Act and, therefore, would not be an employee in any unit of Supreme's employees which the Board might find to be appropriate.

9. Manuel and Antonio Azevedo are brothers and partners in a business operating in the style of Azevedo Carpentry, a registered name. They perform finish carpentry work on houses under construction and consider themselves to be self-employed. They started the business in February or March of 1988 and began doing work for Supreme around the same time. With one exception, they worked solely for Supreme until July 1989. The exception was when they performed some work, at the request of Supreme, for DeSouza Carpentry when Supreme had no work for them. The partnership has not solicited work from contractors other than Supreme.

10. The work which the partnership performed for Supreme usually consisted of installing baseboards, wood trim for windows and doors and hanging doors. The materials were supplied by Supreme, but consumable supplies like nails and sand paper were supplied by the partnership. It was paid a pre-determined amount for each house. The price per house was set by Supreme after discussion with Manuel Azevedo, but it is clear from the evidence that Azevedo either accepted the work at Supreme's price or the partnership did not do the work. When the partnership completed an agreed upon number of houses and Supreme had approved the work, the partnership invoiced Supreme for the work at the pre-determined price. It was paid the entire value of the invoice without any holdback. Supreme did not deduct for income tax, Canada Pension Plan, unemployment insurance or Ontario Health Insurance Plan. The partnership paid for supplies and paid Guimaraes for his work out of these payments from Supreme, after which the brothers divided equally the residue of the payment. \$600.00 and \$800.00 per house were typical prices paid by Supreme to the partnership, out of which the partnership paid Guimaraes \$80.00 and \$90.00. There is no evidence of the cost of the supplies. The partnership also has an employer number from the Workers' Compensation Board and pays assessments to the Board for the brothers and Guimaraes.

11. Supreme decides which of its houses the partnership will work on, when the work will begin and when it must be completed. It requires that the partnership do its work on the houses at the same time that other trades are at work on the project. If the partnership and Guimaraes are



not going to be able to work on a particular day, Supreme expects to be advised of that fact beforehand. When Manuel Azevedo does not work, Guimaraes does not work.

12. The brothers and Guimaraes supplied the tools with which they worked. These were tools typical of the carpentry trade and commonly owned and supplied by carpenters who are paid by the hour worked. There is no evidence that the partnership or Guimaraes relied on Supreme to supply any tools or equipment, or that they used tools or equipment supplied by Supreme.

13. Guimaraes receives his work from the partnership, in particular Manuel Azevedo. Guimaraes works with the Azevedo brothers, particularly with Manuel, on the same houses on which they work. He installs baseboards at a fixed price per house. That is the only kind of work he does on the houses. He does not perform work for anyone other than the partnership and when it does not have work Guimaraes does not have work. He needs little or no direction in the performance of this work, but when any is required, it is clear that it comes from Manuel Azevedo and not from Supreme. Guimaraes is paid a fixed amount per house based on the number of feet of baseboards to be installed and the price the partnership has accepted from Supreme. He has no influence on the price the partnership charges Supreme. He is paid for his work when the partnership receives payment from Supreme. He is paid by cheque from Azevedo Carpentry. No deductions are taken from his pay for income tax, Canada Pension Plan, unemployment insurance or the Ontario Hospital Insurance Plan.

14. While the Board has no submissions before it from Supreme, its position from the outset was that Manuel Azevedo, Antonio Azevedo and Jose Guimaraes are independent contractors. The applicant disputes that they are independent contractors and claims that they are employees of the respondent in the ordinary sense of that term, or, in the alternative are dependent contractors within the meaning of clause (h) of subsection 1(1) of the Act. As such, the applicant contends that they are included within the definition of employee in clause (i) of subsection 1(1) of the Act. Since that is the nature of the dispute, in the Board's view, it is appropriate to examine the status of those three persons under the dependent contractor provisions of the Act. The clauses of subsection 1(1) of the Act just referred to state:

1.-(1) In this Act,

...

(h) "dependent contractor" means a person, whether or not employed under a contract of employment, and whether or not furnishing his own tools, vehicles, equipment, machinery, material, or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor;

(i) "employee" includes a dependent contractor;

...

15. The Board will consider first whether Manuel and Antonio Azevedo are independent contractors as contended by Supreme, or are employees of Supreme, as claimed by the applicant. They consider themselves self-employed and expect or hope to "profit" by undertaking with Supreme to install carpentry trim in houses at a pre-determined price per house. Apart from that, there is little evidence of an independent contractor relationship between them and Supreme. They have little influence on the price which they are paid for each house, having to accept the price set

by Supreme or forgo the work. They have no significant control over the circumstances under which they perform the partnership's work for Supreme. Supreme determines when they are to do the work. They do supply their own tools, but these are nothing more than the tools which a carpenter employed for an hourly wage would supply. They also provide at their cost some consumable materials; not an uncommon practice where employees work at a piece rate in residential construction. It appears to the Board that Manuel and Antonio Azevedo are doing little more than supplying their own labour through their partnership to Supreme at a fixed price per unit.

16. There is little opportunity of making a profit or risk of suffering a loss in that arrangement. It is merely a matter of whether the partnership can complete a house in fewer or more hours than those the brothers may have calculated in deciding to accept Supreme's price. All of the partnership's income, and consequently that of the brothers, during the period from February or March, 1988 to July, 1989 was derived from this kind of arrangement with Supreme. Clearly, Supreme's control over the conditions under which the partnership performs finish carpentry for Supreme and the partnership's dependence on Supreme for its source of income place the partnership in a position of economic dependence upon and under an obligation to perform duties for Supreme that makes the partnership's relationship with Supreme resemble more that of employer and employee than that of a client and independent contractor.

17. Therefore, on the totality of the evidence, the Board finds that Manuel Azevedo and Antonio Azevedo are dependent contractors within the meaning of clause (h) of subsection 1(1) of the *Labour Relations Act* and, by operation of clause (i) of that subsection, they are employees of Supreme for purposes of the Act.

18. The Board has found, at paragraph 3 of its decision which issued June 9th, that this application has been made pursuant to subsection 144(1) of the Act. That subsection restricts somewhat the Board's broad general authority under subsection 6(1) of the Act to determine the unit that is appropriate for collective bargaining purposes. *Ninco Construction Ltd.*, [1982] OLRB Rep. Nov. 1692, at paragraph 5. Nothing in subsection 144(1), however, alters the statutory prescription in subsection 6(1) that "...in every case the [appropriate] unit shall consist of more than one employee...". Therefore, the Azevedo brothers would satisfy the mandatory minimum number of employees in the unit described at paragraph 4 of the Board's June 9th decision. The unit is described in terms of the carpenters and carpenters' apprentices employed by Supreme. The parties consider the unit to be appropriate for collective bargaining. The description satisfies the mandatory provisions for a bargaining unit set out in subsection 144(1). Whether or not Guimaraes is found to be an employee or dependent contractor of Supreme, would not affect the description of the unit. The effect of including the Azevedo brothers in that unit would be to include them in a provincial unit of employees who are not solely dependent contractors. Subsection 6(5) of the Act, on the other hand, deems a bargaining unit consisting solely of dependent contractors to be a unit of employees appropriate for collective bargaining. The subsection is worded to allow the Board to include such employees in a unit with other employees, but before doing so it must satisfy itself that a majority of dependent contractors wish to be included in such a unit. That provision would seem to preclude the Board from including dependent contractors in a unit of employees who are not dependent contractors except with the consent of a majority of the dependent contractors concerned. However, the Board has found subsection 6(5) of the Act to be in conflict with the provisions of subsection 144(1) and, pursuant to section 138(1) of the Act, has held that subsection 144(1) will prevail over subsection 6(5). See *Lay-All Drywall Ltd.*, [1988] OLRB Rep. March 308. The Board herein adopts the Board's reasoning in that decision and applies it to the circumstances of this application.

19. Accordingly, the Board finds that all carpenters and carpenters' apprentices in the

employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

20. Having settled the description of the appropriate bargaining unit and found that Manuel and Antonio Azevedo are employees in that unit, the Board is satisfied on the basis of all the evidence before it that, whether or not Guimaraes is ultimately found to be an employee in the unit, more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on May 11, 1989, the terminal date fixed for this application and the date which the Board determines, under section 103(2)(j) of the *Labour Relations Act*, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

21. Where, as here, the Board is satisfied that the description of the appropriate bargaining unit has been settled and the Board can say with certainty that more than fifty-five per cent of the employees in that unit on the date of making of the application were members of the applicant at the material time, the Board has jurisdiction to issue a final certificate. See *Robin Hood Multifood Inc.*, [1985] OLRB Rep. July 1159 at paragraphs 6 to 12. In that case, a question remained as to whether certain persons were employees within the meaning of the Act and, therefore, whether they were in the bargaining unit. The Board was satisfied that the resolution of the question could not affect either the description of the unit or the applicant's right to be certified. The Board was satisfied also that, if the parties could not resolve the issue in collective bargaining, it was a question which could be resolved under subsection 106(2) of the Act which provides:

If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes.

The circumstances in the instant application are quite analogous. If the applicant and Supreme are unable to resolve in bargaining the issue of whether Guimaraes is an employee or an independent contractor, they can bring an application under subsection 106(2) of the Act.

22. Accordingly, final certificates will issue to the applicant pursuant to section 144(2) of the Act which states in part as follows and provides for the issuance of more than one certificate if the applicant has the requisite membership support:

..., the Board shall certify the trade unions as the bargaining agent of the employees in the bargaining unit and in so doing shall issue a certificate confined to the industrial, commercial and institutional sector and issue another certificate in relation to all other sectors in the appropriate geographic area or areas.

[emphasis added]

Therefore, pursuant to section 144(2) of the Act, a certificate will issue to the applicant affiliated bargaining agent on its own behalf and on behalf of all other affiliated bargaining agents of the employee bargaining agency named in paragraph 2 of the Board's decision dated June 9, 1989 in respect of all carpenters and carpenters' apprentices in the employ of the respondent in the indus-



trial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.

23. Further, pursuant to section 144(2) of the Act, a certificate will issue to the applicant trade union in respect of all carpenters and carpenters' apprentices in the employ of the respondent in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman.

---

**1781-89-R Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91, Applicant v. Trans Continental Printing Inc., Respondent v. Group of Employees, Objectors**

**Certification - Natural Justice - Practice and Procedure - Union and employer agreeing on expanded bargaining unit to include group specifically excluded in posted notice to employees - Natural justice requiring notice to all persons possibly affected by certification - Posted notice of certification application of itself insufficient notice to group specifically excluded from unit description - Board ordering reposting with expanded bargaining unit description and extending terminal date**

**BEFORE:** *Owen V. Gray*, Vice-Chair, and Board Members *J. A. Rundle* and *P. V. Grasso*.

**APPEARANCE:** *Linda Huebscher, John Raudoy, Kim Cullen, Gordon Kelly, Mike Martin and Dan Broudol* for the applicant; *Michel Guay, Raymond Beaulieu, Victor Marcou, Louis Bourdon and Jacques Michaud* for the respondent; *Russel Zinn and Garry Murree* for the objectors.

**DECISION OF THE BOARD;** November 23, 1989

1. This is an application for certification in respect of which a Notice to Employees in Form 6 was posted in the respondent's premises on October 27, 1989 at 4:00 p.m. Paragraph 1 of that notice reads as follows:

1. TAKE NOTICE that the applicant on October 20, 1989 made application to the Ontario Labour Relations Board for certification as bargaining agent of employees of Trans Continental Printing Inc. in the following unit claimed by the applicant to be appropriate:

"All employees of the respondent in the County of Stormont, save and except group leaders, those above the rank of group leaders, office, clerical and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period."

The notice also advised employees that the terminal date fixed by the Registrar was November 1, 1989, that the hearing of the application would take place on November 16, 1989 and that a Labour Relations Officer ("LRO") would convene a meeting of the parties to the application on November 9, 1989.

2. Representatives of the applicant, the respondent and a group of employees who had filed a petition opposing certification of the applicant all met with the Labour Relations Officer on November 9, 1989. The following issues had not been resolved among them by the time the meeting concluded:

- (a) whether the applicant's membership evidence had been filed in a timely manner;
- (b) whether the unit described by the applicant in its application was the appropriate bargaining unit or, as the respondent claimed, there should be two appropriate bargaining units: one of "skilled" employees and the other "unskilled" employees, both with the range of exclusions set out in the applicant's proposal;
- (c) whether the "unskilled" employees were employees of the respondent or of a third party employment agency;
- (d) whether, as the applicant claimed, Gary Murree, Chief Electrician, and James Watkins, Chief Mechanic, were excluded from the bargaining unit because, as the applicant claimed they exercised managerial functions within the meaning of clause 1(3)(b) of the Act as of the application date;
- (e) whether the petition in opposition to the applicant represented a voluntary expression of the wishes of the persons who signed it.

Subject to the dispute about Messrs. Murree and Watkins and the identity of the employer of the "unskilled employees", all those present at the meeting with the Labour Relations Officer agreed on lists of the persons employed by the respondent in the appropriate bargaining unit (or units) as of the application date. They also agreed on the exclusions proposed by the applicant, including the exclusion of "group leaders".

3. When the application came on for hearing before this panel on November 16, 1989, representatives of the applicant, respondent and objecting employees ("the participants") agreed that the applicant's membership evidence had been filed in a timely manner, that the appropriate bargaining unit should be as described by the applicant and that the "unskilled" employees were employees of the respondent. We reviewed the remaining issues with the participants to determine what hearing time might be necessary to deal with them and how that hearing time might best be scheduled. Following that discussion, representatives of the participants came to some further agreements. They agreed that the Chief Electrician and Chief Mechanic did not exercise managerial functions within the meaning of clause 1(3)(b) as of the application date, so that Messrs. Murree and Watkins were employees in the bargaining unit on the application date. They also agreed to amend the bargaining unit description upon which they had earlier agreed, so as to now *include* all those employed as "group leader". They agreed that there were four persons whose job title was "group leader" on the application date: J. Bronzan, D. Brodeur, S. Reid and S. Martelle.

4. We then raised with the participants the question whether the hearing of this application on its merits should proceed without giving notice to the group leaders that it now affected them. The applicant took the position that no further notice should be given. The respondent and objectors took the contrary position.

5. Counsel for the applicant argued that notice of the application had been given to all

employees, including the group leaders, when the Form 6 notice was posted in the workplace. As for the fact that the notice described group leaders as excluded from the unit for which the applicant was seeking certification, counsel for the applicant argued that the bargaining unit ultimately determined by the Board is often different from the one described in the application and that these differences often arise as a result of agreements made by the trade union and the employer when they meet with a Labour Relations Officer before the application is heard. She argued that the group leaders had had the opportunity to attend the meeting with the Labour Relations Officer; having not done so, she argued, they were not entitled to further notice.

6. Counsel for the applicant argued that if we determined that group leaders had not already received adequate notice that the application affected them, we should proceed to dispose of the application on the basis of the material before us, then advise the group leaders of our decision and of their right to reconsideration if they had any difficulty with it. If we were not prepared to do that, counsel argued, we should at least rule that the only issue on which group leaders could speak once notice had been given to them was whether group leaders should be included in or excluded from the appropriate bargaining unit.

7. Any person who would fall within any bargaining unit for which a trade union might be certified in a certification application is a person whose legal rights may be directly affected by the outcome of that application. As the Board observed in *Tektron Equipment Corporation*, [1983] OLRB Rep. Nov. 1932:

10. The granting of an application for certification has a substantial effect on the rights and obligations of the individual employees in the bargaining unit for which the certificate is granted. An employee's right to bargain individually with his or her employer, however real or illusory that right may be, is terminated if the applicant trade union is granted a certificate for a bargaining unit which includes that employee. The terms and conditions of his employment are thereafter subject to the influence of the trade union, which thereafter has the exclusive right to bargain with respect to his terms and conditions of employment and to establish with his employer a collective agreement by which he is bound by virtue of section 50 of the *Labour Relations Act*. The rules of natural justice require that persons so directly affected by quasi-judicial proceedings be given notice of those proceedings and an opportunity to make representations. Pursuant to the Board's Rules of Practice, notice is given to affected employees of applications for certification (Forms 6, 7 and 78), as well as of applications to terminate bargaining rights (Form 19), applications to declare successor trade union status (Form 24) and applications under Sections 63 and 1(4) (Forms 28 and 33).

8. The combined affect of sections 5 and 6 of the *Statutory Powers Procedure Act*, R.S.O. 1980 c. 484, is that the Board is obliged to give notice of its proceedings to all those whose legal rights might be affected by those proceedings. Each and every such person is a "party" to those proceedings in the sense in which that word is used in the *Statutory Powers Procedure Act*.

9. It is true, as counsel for the applicant argues, that the bargaining unit found by the Board to be appropriate in a particular application may be different from the one proposed by the applicant. It is not legally necessary for those ultimately included in the bargaining unit to have received express notice of the possibility of that precise bargaining unit configuration, so long as they have notice of the possibility of their being included in some bargaining unit as a result of the application. The applicant's argument that no further notice to group leaders is needed would be



more tenable if the Form 6 notice simply advised all employees of the respondent that the applicant had applied for certification as exclusive bargaining agent for "a unit of employees of the respondent" or if, having set out the unit sought by the applicant, the notice went on to inform employees that the Board might certify the applicant for a unit which included employees other than those in the unit described in its application. The Form 6 notice does neither of those things, nor should it. It would be undesirable to encourage the intervention of employees for whom an applicant trade union clearly does not seek certification unless and until there is some suggestion that the appropriate bargaining unit should include such persons. The only Board notice given to group leaders employed by the respondent informed them that the applicant was not seeking bargaining rights for group leaders. At the time of our hearing, the group leaders had had no notice, from the Board or otherwise, that the applicant had amended its application or that any other interested party was proposing their inclusion in the appropriate bargaining unit, nor did they have such notice at the time of the LRO's meeting. They would have had no reason to attend either the LRO's meeting or the hearing; their non-attendance cannot prejudice their right to notice.

10. We are not dealing here with a situation in which the Board has decided a point in the belief that all those affected have been given notice and has later discovered that through misunderstanding or misadventure some affected persons have not had notice. In those circumstances it would be highly appropriate for the Board to bring the decision to the attention of those whose possible lack of notice it has subsequently discovered and request that any application for reconsideration on those grounds be made within a particular period of time. That is not the situation here. We know there are affected parties who do not have notice. They are entitled to a hearing before the Board makes a decision, not just the opportunity to persuade the Board to change a decision made in deliberate disregard for their right to notice and of the Board's statutory obligation to give such notice. No one would seriously suggest that the Board could respond to a certification application by giving the employer notice that the application had been granted subject to the employers right to request reconsideration. The employer's right to notice and the opportunity to participate in a hearing *before* a decision is made is no greater than that of the affected employees.

11. An employee affected by an application before the Board is ordinarily entitled to address any issue of substance which arises in that application: see *Tektron Equipment Corporation, supra*. The proposition that group leaders should only be permitted to address the question whether the bargaining unit should include them or not is an issue which should not be determined in their absence when they have had no notice of the proceedings.

12. For the foregoing reasons, at the hearing on November 16, 1989 we ruled orally that the Board should give notice to employees of the application in its amended form.

13. There was then the question of extending the terminal date. We observed that that question could not be determined against the group leaders until they had been given notice that they are affected this application. Against any possibility that the Board might then be persuaded not to extend the terminal date, we invited the union to consider that an extension granted at the next hearing would result in a much later terminal date than an extension granted at this time. The union asked that the Board extend the terminal date at this time.

14. Accordingly, we direct that the Registrar prepare and forward to the respondent for posting a Form 6 notice in which the first paragraph reads as follows:

1. TAKE NOTICE that the applicant on November 16, 1989 amended this application to the Ontario Labour Relations Board to seek certification as bargaining agent of employees of Trans Continental Printing Inc. in the following unit claimed by the applicant, respondent and objecting employees to be appropriate:

"All employees of the respondent in the City of Cornwall, save and except foremen, those above the rank of foreman, office, clerical and sales staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period."

We hereby extend the terminal date to a date to be fixed by the Registrar. In fixing that date, the Registrar is to apply the principles of section 2 of the Board's Rules of Procedure with reference to the date on which the new Notice to Employees is served on or mailed to the employer for posting. The Registrar is also directed to relist this matter for hearing. The new hearing date and extension of terminal date are to be reflected in paragraphs 2 and 3, respectively, of the new Notice to Employees. A fresh LRO meeting should be scheduled, and notice of that should also appear in the new Notice to Employees. Copies of this decision shall be appended to the new Notices to Employees. The respondent is directed to post those notices in conspicuous places where they are most likely to come to the attention of all employees who may be affected by the application and to keep the notices posted until the close of business on the extended terminal date set out therein.

---

**0047-89-G; 0170-89-R** The Ontario Council of the International Brotherhood of Painters and Allied Trades, Applicant v. **W.G. Gallagher Construction Limited**, Respondent; Ontario Council of the International Brotherhood of Painters and Allied Trades and International Brotherhood of Painters and Allied Trades, District Council 46, Applicants v. **W.G. Gallagher Construction Co. and W.G. Gallagher Construction Limited**, Respondents

**Sale of a Business - Related Employer - Union seeking declaration of company's status as successor employer - Sole proprietor signing Working Agreement - Proprietorship business and assets subsequently sold to corporation - Both events transpiring before enactment of sale of business and related employer provisions - Sale of business and related employer provisions neither retroactive nor retrospective - Application dismissed**

**BEFORE:** *Louisa M. Davie*, Vice-Chair, and Board Members *W. N. Fraser* and *J. Redshaw*.

**APPEARANCES:** *S. Wahl* for the applicants; *W. Thornton* for the respondents.

**DECISION OF THE BOARD;** November 2, 1989

1. We have before us Board File No. 0170-89-R which is an application under section 63 and section 1(4) of the *Labour Relations Act* ("The Act"). In that application, the applicants, the Ontario Council of the International Brotherhood of Painters and Allied Trades and the International Brotherhood of Painters and Allied Trades District Council 46 ("the Painters Union") allege that there has been a sale of the business from W.G. Gallagher Construction Co. ("W.G.G.") to W.G. Gallagher Construction Limited ("Gallagher Limited"), and that Gallagher Limited is a successor employer to W.G.G. In addition, the Painters Union asserts that W.G.G. and Gallagher Limited carry on associated or related activities or businesses under common control or direction and for purposes of the Act ought to be declared as constituting one employer. We also have before us an application under section 124 of the Act (Board File No. 0047-89-G) in which the Painters Union has referred a grievance concerning the interpretation, application, administration or alleged violation of the collective agreement to the Board for final and binding determination.



The Painters Union allege that Gallagher Limited is bound to a collective agreement between the Ontario Painting Contractors Association, Acoustical Association Ontario, Interior Systems Contractors Association of Ontario and the International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades. Gallagher Limited denies that it is bound to that collective agreement, or that the collective agreement has been violated. It would appear that unless the Painters Union is successful in either its section 63 or section 1(4) application, it is unlikely to succeed with its grievance. We therefore proceeded to deal first with the section 63 and section 1(4) applications.

2. The Painters Union's applications under section 63 and section 1(4) of the Act raise a number of factual and legal issues. Chief amongst those issues is the question whether either section 63 or section 1(4) of the Act can be, or need to be applied either retroactively or retrospectively. The parties have agreed that as a preliminary matter the Board ought to proceed with that issue first. The parties have further agreed that their participation in the hearing of the Board to determine that preliminary matter is without prejudice to either parties' position in respect of the other factual and legal issues which remain outstanding.

3. The facts underpinning both the section 63 and section 1(4) applications are relatively straightforward. Prior to August 21, 1957, William G. Gallagher carried on business as a sole proprietor under the firm name and style of W.G. Gallagher Construction Co. ("W.G.G."). On August 21, 1957, W.G.G. sold the entire goodwill of the "... business and all its other assets" to Gallagher Limited. Gallagher Limited also assumed all of the liabilities of the business of W.G.G. Gallagher Limited had been incorporated by letters patent in July, 1957. W.G.G. had signed the "working agreement" with the Building and Construction Trades Council of Toronto and Vicinity on February 29, 1956. The purpose and effect of the "working agreement" has been dealt with in a number of Board and Court decisions and need not be dealt with by us in this particular instance. It is sufficient to note that for purposes of this decision (and without prejudice to the position of the parties regarding the effect of the working agreement in this case) any bargaining rights of the Painters Union for employees of W.G.G. or Gallagher Limited must flow from this working agreement. For the purposes of this decision, we have assumed that since the commencement of its business, Gallagher Limited has conducted itself in a manner which is consistent with the obligations of an employer party to the working agreement. The only other relevant evidentiary fact placed before us on agreement of the parties was that in December, 1985, R. G. Gallagher, the President of Gallagher Limited (and the son of W. G. Gallagher) purported to terminate the working agreement in accordance with Article 7 of that agreement.

4. For purposes of determining this preliminary matter only, counsel for Gallagher Limited admitted that if Gallagher Limited had obtained all of the assets, and the entire goodwill of W.G.G., and assumed all of the liabilities of W.G.G. in circumstances identical to the events and circumstances which occurred around August 21, 1957, at some point in time *after* the first statutory provisions dealing with the sale of a business were enacted, a "sale of a business" within the meaning of the Act would have occurred and a successor employer declaration could have been made by the Board. Counsel argued however, that the first statutory provisions in respect of a "sale of a business" or the "successor employer" provisions did not become effective until 1963, more than five years after the "sale" had occurred and therefore the successor employer provisions could not be applied either retroactively or retrospectively to that sale. In so doing, counsel argued that there was a presumption against the retrospective or retroactive application of statutes. He submitted that these presumptions applied and were not rebutted in the present circumstances.

5. Similarly, and for purposes of dealing with this preliminary issue only, counsel admitted that if W.G.G. and Gallagher Limited had both existed and carried on business at or after the time



the single employer provisions first became effective, that set of circumstances would be encompassed by the current provisions found in section 1(4) of the Act and would satisfy the three preconditions to be Board's discretionary, declaratory power. Again however, counsel asserted that as the first single or "common employer" provisions did not become effective until 1971, the statutory provisions could not be applied retroactively or retrospectively to capture and encompass the events of 1957. Counsel also submitted that as W.G.G. ceased to exist as a business entity in 1957, and did not exist at any time subsequent to the passage of the single or common employer provisions, the current provisions could not be applied to declare W.G.G. and Gallagher Limited as one employer. Counsel again relied upon the presumptions against the retroactive or retrospective application of statutes and argued that the presumptions applied, and were not rebutted in the circumstances before us.

6. Counsel for the Painters Union on the other hand argued that the presumptions against retroactivity or retrospectivity did not apply to the facts and circumstances before us. Counsel argued that section 63 and section 1(4) are merely declaratory of a current characteristic or status so that the presumptions do not arise. In this regard, counsel argued that we were charged with interpreting and applying the provisions of the Act. It was his submissions that a proper interpretation or construction of the statutory provisions shows the sections to be declaratory of a current status. Counsel also asserted that these sections are remedial in nature and were enacted to remedy an existing mischief and protect the public and the "working man" so that the presumptions against the retroactive or retrospective operation of statutes did not apply.

7. Both counsel referred us to a number of cases and legal writings in which the presumptions against the retroactive or retrospective operation of statutes is addressed. A review of that material shows that the difference between a retroactive and a retrospective statute was accurately set out in an article by E. A. Driedger, *Statutes: Retroactive, Retrospective Reflections*, 56 *Canada Bar Review* 264 [1978] wherein Mr. Driedger states at pages 268-269:

A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in respect of a past event. A retroactive statute *operates backwards*. A retrospective statute *operates forwards*, but it looks backwards in that it attaches new consequences *for the future* to an event that took place before the statute was enacted. A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event.

8. In our view, we are not here concerned with the presumption against the retroactive operation of a statute. Neither the Act nor sections 63 or 1(4) contain any provisions which indicate that these sections must be deemed to be the law as of a time prior to their enactment. The issue therefore becomes whether the presumption against retrospectivity applies.

9. We begin our analysis by examining the purpose or rationale of the presumption against retrospectivity. That purpose was summarized by Willis J. in *Phillips v. Eyre* (1870), L.R.6 Q.B. at p.23 where he states:

Retrospective laws are, no doubt, *prima facie* of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. ... Accordingly, the court will not ascribe retrospective force to new laws affecting rights, unless by express words or necessary implication it appears that such was the intention of the legislature.

10. Not all statutes attract the presumption. As outlined by Mr. Driedger in his article, at page 271:

... there are three kinds of statutes that can properly be said to be retrospective, but only one that attracts the presumption. First, there are the statutes that attach benevolent consequences to a prior event; they do not attract the presumption. Secondly there are those that attach prejudicial consequences to a prior event; they attract the presumption. Thirdly there are those that impose a penalty on a person who is described by reference to a prior event, but the penalty is not a consequence of the event; these do not attract the presumption.

11. There are therefore two distinct questions which must be answered in this instance. Are sections 63 and/or 1(4) retrospective provisions of the Act, and if so are they retrospective provisions which attract the presumption?

12. To answer the first question, Mr. Driedger poses the following question:

Is there anything in the statute to indicate that the consequences of a prior event are changed, not for a time before its enactment, but henceforth from the time of enactment, or from the time of its commencement if that should be later?

13. Counsel for the respondent argues that section 63 (formerly sections 47a and section 55, and hereinafter referred to as the successor employer provisions) clearly refers to an event - the sale of a business. Since 1963, the successor employer provisions have attached new consequences to that event. The presumptions against retrospectivity however, precludes this Board from attaching those same types of consequences to an event which occurred prior to 1963, namely the sale of the business from W.G.G. to Gallagher Limited in 1957.

14. Counsel for the Painters Union on the other hand argues that the presumption does not apply because the successor employer provision is a provision which is triggered by a status or a characteristic. Although events which occurred prior to the enactment of the successor employer provisions may have created that status or characteristic, the provisions themselves are declaratory of a current status, and have prospective effect only.

15. These two diverse submissions from each counsel highlight one of the "exceptions" to the presumption against retrospectivity, or more accurately stated highlight one of the situations in which it can be said that the presumption against retrospectivity does not arise. If the statute attaches to a "characteristic" rather than an "event", the presumption does not apply. Mr. Driedger puts the matter this way:

When can it be said that a construction gives retrospective effect to a statute? In all but the simplest enactments there is set out what may be called the fact-situation, namely, the facts that bring the rule of law into operation. This fact-situation can be set out by defining the subject of the enactment, by describing the circumstances that bring the rule into operation, or partly in the one way and partly in the other. The fact-situation may include a reference to past facts by employing clauses in the past or perfect tenses; the question then arises whether the facts that arose before the enactment bring it into operation, or only those that arose between the time of the enactment and the time of its application.

These past facts may describe a status or characteristic, or they may describe an event. It is submitted that where the fact-situation is a status or characteristic (the being something), the enactment is not given retrospective effect when it is applied to persons or things that acquired that status or characteristic before the enactment, if they have it when the enactment comes into force; but where the fact-situation is an event (the happening of or the becoming something), then the enactment would be given retrospective effect if it is applied so as to attach a new duty, penalty or disability to an event that took place before the enactment.

16. In support of his submissions that the successor employer provisions are declaratory of a current status, counsel for the painters union focused upon the language used in the statute. When first enacted, section 47a (now section 63) stated:

... the trade union *continues*, until the Board ... otherwise directs, to be the bargaining agent for the employees ....

[emphasis added]

Counsel submitted that the use of the word “continues” indicates that the Legislature intended the section to be applied to all “sales”, notwithstanding the fact that the “sale” occurred prior to the enactment of the statute. He argued that use of the word “continues” supports his assertion that as originally enacted section 47a (now section 63) was descriptive of a status or characteristic to which new consequences as a result of having that status or characteristic were applied.

17. Similarly, in addressing the current provisions of the Act, counsel argued that the use of such words as “*is ... bound by the collective agreement*” and “*is ... the employer for the purposes of the application ...*”, combined with the use of the words “to whom the business has been *sold*” show that the legislature is focusing upon a status or characteristic and not an event which has taken place. Counsel asserted that in drafting this section the legislature has directed the Board to focus upon the characteristic of a unionized business that has been sold. He argued that the focus of the section is not the timeliness of the sale, but rather it is the state of being bound to recognize the trade union or the characteristic of being bound to a collective agreement. In further support of his submissions that section 63 was declaratory of a status, counsel emphasized that the Board has no discretion pursuant to that section. The consequences which flow from a “sale” are automatic. He argued that this fact was more consistent with the view that the provision was descriptive of a state of being (with the automatic results that flow from that state of being) rather than a view that the provision relates to an event.

18. We do not agree with counsel’s submissions. In our view, the provisions of the original section 47a (and the subsequent 47a as amended, section 55 and the current section 63) describe an event and not a characteristic. That event is the sale of the business. These provisions depend on the happening of that event. It is from that event that consequences flow. Although that event may, at least since 1963, result in the attainment of a status or a characteristic, (namely the status of being bound to recognize a trade union) in order for the successor employer provisions to have the effect which counsel urges upon us, that status or characteristic must have been acquired before the original section 47a was enacted *and* the status or characteristic must have existed at the time the successor employer provisions were enacted and the declaration sought.

19. In this case, when the law was enacted in 1963 it cannot be said that Gallagher Limited had the “characteristic” or “status” of a “successor employer” as that term is understood and applied in the Act. There was no such concept as the status or characteristic of being a “successor employer” in the *Labour Relations Act* sense of the word. That concept was new. At the time section 47a was enacted, the only “characteristic” which Gallagher Limited had, was the characteristic of being a business entity which several years earlier had acquired the assets and liabilities of W.G.G. To hold otherwise would undermine the very reasons for the presumption against retrospectivity as enunciated in *Philips v. Eyre, supra*. In order for the presumption against retrospectivity not to apply by reasons of the fact that the statute attaches to a characteristic and not an event, the characteristic, (in this case the characteristic of continuing to be bound to recognize a trade union) must have existed with Gallagher Limited at the time the enactment came into force.

20. Next we turn to examine section 1(4). In this regard both counsel agreed that section 1(4) attaches to a characteristic rather than an event. We agree with that assessment.

21. Counsel for Gallagher Limited submitted however that because the status or characteristic of being “a single employer” did not exist at any time *after* the single employer provisions



were enacted in 1971, those provisions cannot be applied retrospectively to a characteristic which existed prior to enactment of section 1(4).

22. Counsel for the Painters Union on the other hand emphasized the use of the words “whether or not simultaneously” in section 1(4). He argued that if the presumption applied (and he argued it did not because the section was declaratory of a status or characteristic) those words rebutted the presumption. He also submitted that those words pointed to a “time continuum” unrelated to the enactment of section 1(4). As a result, it was argued, section 1(4) applies throughout time. As it is unnecessary for the business entities to have carried on their activities or businesses simultaneously, it is equally irrelevant that one of those business entities may have carried out its business or activities prior to the enactment of section 1(4).

23. In the alternative, it was submitted by counsel for the applicant that the sole proprietorship still existed because the person who was the sole proprietor still exists. Counsel argued that the proprietorship did not end upon the incorporation of Gallagher Limited. A sole proprietorship is the business extension of W.G. Gallagher and it exists so long as W.G. Gallagher exists. The mere sale or transfer of goodwill, assets and liabilities from W.G.G. to Gallagher Limited did therefore not put an end to the sole proprietorship. It was submitted that in effect, at all relevant times, Mr. Gallagher has put into effect the business decision as to whether to carry out his activities through the sole proprietorship (W.G.G.) or the limited company (Gallagher Limited). Therefore, as there were two entities in existence at the time section 1(4) was enacted, and because section 1(4) is declaratory of a characteristic, the presumption against retrospectivity is not applicable.

24. We do not agree with either of these submissions. In our view, the sole proprietorship does not continue to survive simply because Mr. Gallagher continues to exist. From a practical point of view, the sole proprietorship no longer exists because it is not operating, has no assets or liabilities and no goodwill - all of which were transferred to Gallagher Limited in 1957. At any one time there has only been one entity functioning or operating in the construction industry. Originally that entity was a sole proprietorship, W.G.G. Since 1957, that entity is an incorporated company, Gallagher Limited. Gallagher Limited replaced W.G.G. and substituted its limited liability for the liability of the sole proprietorship. Upon that replacement or substitution the sole proprietorship ceased to exist.

25. There were not therefore two entities in existence in 1971 when section 1(4) was first enacted. Section 1(4) has always required as a precondition before a “single employer” declaration can be made the existence of at least two entities. Before a declaration regarding the “status” or “characteristic” of being a “single employer” can be made two entities must exist. In 1971 when section 1(4) was first enacted the “characteristic” of being a single employer did not exist with Gallagher Limited because W.G.G. no longer existed. Since 1971 that state of affairs has not altered. W.G.G. has not re-appeared as an entity with whom Gallagher Limited can acquire the characteristic or status of being declared as a single employer. As the necessary preconditions to the characteristic of being a single employer did not exist in 1971, and have not existed since that time, it would be contrary to the presumption against retrospectivity to reach back to 1957 and attach that “characteristic” to a past state of affairs which existed when the “characteristic” of being declared a single employer for purposes of the *Labour Relations Act* was unknown. In this regard, we concur with and adopt the words of E. A. Driedger when he says:

Thus, the position appears to be that whenever the operation of a statute depends upon the doing of something or the happening of some event, the statute will not operate in respect of something done or in respect of some event that took place before the commencement of the statute; but if the operation of the statute depends merely upon the existence of a certain state of

affairs, the *being* rather than the *becoming*, the statute will operate with respect to a status that arose before the commencement of the statute, if it exists at that time.

As the status did not exist at the time section 1(4) was enacted, section 1(4) cannot be applied.

26. Neither do we concur with the submissions that the use of the words “whether or not simultaneously” are sufficient to rebut the presumption against the retrospective application of statutes. In *Upper Canada College v. F. J. Smith* (1920) .... it was stated,

... if the language of the statute sufficiently expresses the intention of the legislation that it should govern all actions, without exception, begun before or after the date fixed by the statute itself for the commencement of its operations.

That intention may be manifested by express language or may be ascertained from the necessary implications of the provisions of the statute, or the subject matter of the legislation or the circumstances in which it was passed may be of such a character as in themselves to rebut the presumption that it is intended only to be prospective in its operation.

27. In order to rebut the presumption the words of the legislature must be very clear (see *Mantelli v. Mantelli*, (1981), 130 D.L.R. (3d) p. 300). In our view the use of the words “whether or not simultaneously” is not such a clear expression that the legislature intended the section to be applied retrospectively. In our view, the reasons or rationale for the inclusion of those words was succinctly stated in *Warren Steeplejacks Limited*, [1989] OLRB Rep. March 309 at paragraphs 17-19 where the Board rejected the argument that section 1(4) required the entities to exist contemporaneously. That case does not however support the proposition that the words “whether or not simultaneously” are broad enough to encompass a fact situation such as the present. In view of the presumption against the retrospective operation of statutes, and within the context of section 1(4) and its legislative history, we are of the view that although the entities need not exist contemporaneously, both must certainly have existed since the enactment of section 1(4). The use of the words “whether or not simultaneously” refers only to the fact that entities, which have existed at least, since 1971 need not have existed and/or carried out their activities simultaneously since that time. These words do not go so far as to allow this Board to declare Gallagher Limited a single employer together with W.G.G. - an entity which had ceased to exist and/or carry out activities long before section 1(4) was first enacted.

28. Counsel for the respondent also made an alternative argument in respect of the application of section 1(4) to these facts. Counsel submitted that if the Board were to interpret section 1(4) as referring to an event, namely the “becoming” of a common single employer, then the “event” which gives rise to the application of section 1(4) to the case before us is the sending of the letter in December 1985. That letter purports to give notice of the termination of the collective bargaining relationship. It was submitted that the letter was recognition by Gallagher Limited that it was bound to recognize the Building and Construction Trades Council of Toronto and Vicinity and its affiliates. That event occurred in 1985 well after the original single employer provisions of the Act were passed.

29. We do not accept counsel’s submissions regarding the effect of the letter sent in December 1985. It may be that in December 1985 Gallagher Limited *believed* it was bound to recognize the Building and Construction Trades Council of Toronto and Vicinity and its affiliated unions. In our view, however, it was not so bound. Gallagher Limited’s mistaken belief cannot be the source of the applicant’s bargaining rights. In fact, Gallagher Limited could only be bound to recognize the applicant through one of several circumstances, none of which existed in December 1985. Gallagher Limited could have been bound to recognize the applicant had it entered into a voluntary recognition agreement. This it has not done. The December 1985 letter purporting to terminate the



working agreement is not such a voluntary recognition agreement. Gallagher Limited could also have been bound had the applicants applied to be certified pursuant to the provisions of the Act. That also is not the case. The only other means by which Gallagher Limited could be bound to recognize the applicant is through the application of section 63 or section 1(4). We have already indicated that section 63 cannot be applied retrospectively to encompass the "sale" from W.G.G. to Gallagher Limited which occurred in 1957. Further, we are of the view that the presumptions against the retrospective operation of statutes prohibits the Board from applying either section 1(4) or section 63 with the ultimate result that Gallagher Limited would be bound to recognize the applicant. In this regard we wish to address counsel's argument that even if the Board were to conclude that the presumption against retrospectivity would normally apply to either provision, it ought not to be applied because the Act, (and in particular these provisions) is not a prejudicial statute but rather is a remedial, beneficial statute, enacted to protect the public.

30. Once again we refer to Mr. Driedger's article where he concludes the article by summarizing two situations when the presumption against retrospectivity will not apply.

3. The presumption does not apply unless the consequences attaching to the prior event are prejudicial ones, namely, a new penalty, disability or duty.
4. The presumption does not apply if the new prejudicial consequences are intended as protection for the public rather than as punishment for a prior event.

31. In addressing this matter, counsel for the respondent submitted that the effect of these provisions is not to impose or create a "new" obligation or duty upon Gallagher Limited. It was argued that the effect of the section 63 declaration is only to declare that the known and existing obligations and duties of W.G.G. to recognize the union were transferred to Gallagher Limited when the sale took place. Similarly, the effect of a section 1(4) declaration is to confirm that the existing obligations and duties to recognize the union were not lost merely because of a new corporate entity. These sections confirm the existing rights of the employees and their trade union and do not impose any new obligations or duties.

32. We do not agree. As a matter of law the sole proprietorship (W.G.G.) has a separate legal personality from the incorporated company (Gallagher Limited). The obligations or duties of one are not necessarily the obligations or duties of the other. In our view, the requirement that Gallagher Limited recognize the applicant by reason of a declaration made under section 63 or section 1(4) of the Act is not merely a continuation of existing duties or obligations, but is the imposition of new duties or obligations.

33. Counsel for the applicant also asserted that the presumption against retrospectivity does not apply where the statute is remedial and designed to remedy an existing mischief. In our view, that broad proposition is not supported by any of the authorities cited by counsel. Similarly, we do not agree with counsel's assertions that we must first look as to whether the enactment is remedial, and it is only after having made that determination that we can turn to determine whether the presumption against retrospectivity applies. In our view, the appropriate analysis is to start with the presumption and to determine whether it applies and/or whether it has been rebutted. In so doing resort can be had to the objects and purposes of the Act including its remedial nature. A review of the jurisprudence indicates that where the object of the enactment is to protect the public, Courts have held that the presumption has been rebutted or does not apply. It is that portion of the argument which we propose to address. As Mr. Driedger stated in his article and at page 275:

In the end, resort must be had to the object of the statute. If the intent is to punish or to penalize a person for having done what he did, the presumption applies, because a new consequence



is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.

34. We agree that section 1(4) and section 63 are remedial provisions. We do not view either section 63 or section 1(4) as “punitive” legislation designed to punish a person for “having done what he did”. We do not agree however, that section 63 or section 1(4) are “intended to protect the public” in the manner in which that phrase has been interpreted and applied in cases where the presumption was not applied because a statute was designed to protect the public.

35. A brief review of the cases which deal with this “exception” to the presumption is necessary in order to understand when the “exception” applies or the presumption against retrospectivity is effectively rebutted.

36. *R. V. Vine* (1875), L.R. 10 Q.B. 195 dealt with the statute which prohibited individuals who had been convicted of a felony from selling liquor. The statute provided:

Every person convicted of a felony shall for ever be disqualified from selling spirits by retail, and no licence to sell spirits by retail shall be granted to any person who shall have been so convicted...

The majority of the Court held that the purpose of the enactment was to protect members of the public from the dangers of public-houses run by individuals of dubious character. The purpose of the enactment was not to further punish individuals who had been convicted of a felony.

If one could see some reason for thinking that the intention of this enactment was merely to aggravate the punishment for felony by imposing the disqualification in addition, I should feel the force of Mr. Poland's argument, founded on the rule which has obtained in putting a construction upon statutes - that when they are penal in their nature they are not to be construed retrospectively, if the language is capable of having a prospective effect given to it and is not necessarily retrospective. But here the object of the enactment is not to punish offenders, but to protect the public against public-houses in which spirits are retailed being kept by persons of doubtful characters ... the legislature has categorically drawn a hard and fast line, obviously with a view to protect the public, in order that places of public resort may be kept by persons of good character; and it matters not for this purpose whether a person was convicted before or after the Act passes, one is equally bad as the other and ought not to be intrusted with a licence.

37. Lush, J. dissented as he was of the view that the statute was penal in nature. It was his interpretation that the result of that enactment was that persons who had previously been convicted would forfeit their licences. As a result he was of the view that the presumption against retrospectivity would apply.

38. More recently, the Supreme Court dealt with this “protection of the public” exception in *Brosseau v. Alberta Securities Commission*, [1989] 57 D.L.R. 4(th) 458 (SCC). The enactment dealt with in that instance empowered the *Alberta Securities Commission* to disqualify a person on account of past conduct or conduct which occurred before the effective date of the statute. The Supreme Court referred to Mr. Driedger's text, *Construction of Statutes*, 2nd ed. (1983) and reviewed a number of authorities including *R. V. Vine*, *supra*. It also reviewed *Re A Solicitor's Clerk*, [1957] 3 All E.R. 617 (Q.B.) which had been relied upon by the Alberta Court of Appeal as authority for the proposition that where the objectives of a statute are not “penal” but “protective” the presumption against retrospectivity does not apply. At page 471 the Supreme Court states:

In *Re A Solicitor's Clerk*, [1957] 3 All E.R. 617 (Q.B.), a statute concerning the practice of law by solicitors was amended so as to enable an order disqualifying a person from acting as a solicitor's clerk if such person had been convicted of larceny, embezzlement or fraudulent conversion

of property. A clerk who had been convicted of one of those offences before the coming into effect of the new law, contested his disqualification on the basis that the law was being given a retrospective effect. The Court of Queen's Bench dismissed these arguments. Lord Goddard C.J. found that there was no retrospective effect since the real aim of the law was prospective and aimed at protecting the public. He wrote at p. 619:

In my opinion, however, this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order; but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past.

39. The Supreme Court in *Brosseau* concluded:

The provisions in question are designed to disqualify from trading in securities those persons whom the Commission finds to have committed acts which call into question their business integrity. This is a measure designated to protect the public, and it is in keeping with the general regulatory role of the Commission. Since the amendment at issue here is designed to protect the public, the presumption against the retrospective effect of statutes is effectively rebutted.

In this instance, counsel for the Painters Union has argued that section 63 and section 1(4) of the Act are not penal but are beneficial and protective of the working man so that the presumption does not apply.

40. The purposes and objectives of section 63 and section 1(4) have been articulated by the Board in a number of cases. For example in *Thorco Manufacturing Limited* 65 CLLC ¶16,052, the Board stated:

It is manifest that the object sought to be attained by section 47a of the Act is to maintain and continue the bargaining rights of a union for the employees in the bargaining unit represented by it, when the business or parts thereof in which such employees are employed is sold...

The successor employer provisions are designed to prevent the subversion of bargaining rights. The section is also designed to preserve the structure of the bargaining relationship.

41. Similarly, the purpose of section 1(4) was enunciated by the Board in *Industrial Mines Installations Ltd.*, [1972] OLRB Rep. Dec. 1029 where the Board stated:

"Section 1(4) is obviously contemplated to cure the mischief that results from being unable to properly define and tie down the employment relationship. In many situations where companies have a close relationship an employee may be shifted from one company to another so that his employment relationship, at any given period, is difficult to define in terms of one employer. So too, the number of employees employed by one of those companies at any given time may be impossible to ascertain.

Prior to the enactment of section 1(4), where such situations existed, it was difficult to define the employment relationship and to determine the proper employer for certain purposes under the Act. For example, in certification proceedings it was necessary to determine the proper employer in order to determine whether the union had sufficient membership among the employees to be certified.

Also, in some situations where a union had been granted bargaining rights for the employees of one employer, the employees could be shifted to another associated or related employer with the result that the bargaining rights which had been earned by the trade union for the employees was lost.

So too, in the case where associated or related employers joined in a common enterprise and used one work force, which was shifted and transferred from time to time, the certification with respect to one employer only was, in effect, a certification of a segment of the total enterprise, and could seriously impair the totality of the business operations by inhibiting the shifting of employees between union and non-union segments of the enterprise. It was also possible in situations where associated or related companies carried on a single enterprise that employees of the separate legal entities could be represented by different trade unions so as to cause the bargaining rights within the single enterprise to be unduly fragmented. An example of the type of situation where section 1(4) was applied is found in *Walters Lithographing Company Limited, et al*, [1971] OLRB Rep. July 406.

It is in these types of situations that the interests of the parties in having the Board treat separate employers as constituting one employer for the purpose of the Act became apparent, and it is for that reason that section 1(4) was enacted."

42. We agree that there is a beneficial component to both these enactments. These sections provide, *inter alia*, for the preservation of bargaining rights. However, we do not believe that one can characterize these provisions as "beneficial" or "protective" in a sense that is envisioned in *Brosseau v. Alberta Securities Commission, supra* and the other cases that support this exception to the presumption. Most statutory enactments benefit a given group and, in some cases may have a corresponding negative effect on another group as a result of that benefit. "Beneficial" or "protective" in the context of the presumption against retrospectivity however, is much more specific. In this regard, the cases indicate that the presumption will not be applied to statutes that protect the "public" from some perceived harm. Section 63 and section 1(4) undoubtedly benefit trade unions and their members who are members of the public. Trade unions and their members however, are not representative of the "public" as a whole. In our view, section 63 and section 1(4) were passed by the legislature in an attempt to balance an inequality between two groups within society. Indeed, it can be said that the entire scheme of the *Labour Relations Act* is an attempt to balance rights between two competing groups. Although it can be said that "the public" has an interest in harmonious labour relations, it cannot be said that the legislations is specifically aimed at protecting the public from some perceived harm. In our view, therefore the proposition that the presumption against retrospectivity ought not to be applied because we are dealing with a statute which is not "penal" but "protective" of the public is not applicable.

43. For these reasons, notwithstanding our assumption that:

- (a) a sale of a business within the meaning of section 63 of the Act occurred at about the time of the incorporation of Gallagher Limited, and
- (b) a single or common employer relationship existed between W.G.G. and Gallagher Limited at or about the time of the incorporation of Gallagher Limited,

we are of the view that neither section 63 nor section 1(4) of the Act can be applied retrospectively to these respondents. The application pursuant to section 1(4) and section 63 of the Act is therefore dismissed.

---











CASE LISTINGS OCTOBER 1989

	PAGE
1. Applications for Certification .....	225
2. Applications for First Contract Arbitration .....	237
3. Applications for Declaration of Related Employer.....	237
4. Sale of a Business .....	237
5. Crown Transfer Act .....	238
6. Applications for Declaration Terminating Bargaining Rights.....	238
7. Applications for Declaration of Unlawful Strike .....	239
8. Complaints of Unfair Labour Practice .....	239
9. Jurisdictional Disputes .....	242
10. Applications for Determination of Employee Status.....	243
11. Complaints under the Occupational Health and Safety Act .....	243
12. Colleges Collective Bargaining Act.....	243
13. Construction Industry Grievances .....	243
14. Applications for Reconsideration of Board's Decision .....	245



## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING OCTOBER 1989

### APPLICATIONS FOR CERTIFICATION

#### Bargaining Agents Certified Without Vote

**1001-87-R:** Ontario Nurses' Association (Applicant) v. West Lincoln Memorial Hospital (Respondent) v. Sue Ann Benson and Joyce Smith (Objectors)

Unit #1: "all registered and graduate nurses employed in a nursing capacity by the respondent at Grimsby, save and except Head Nurse and Supervisors and persons above the rank of Head Nurse and Supervisor, Inservice Director, Infection Control Director - Day Co-ordinator, Director of Discharge Planning Services, Employee Health Nurse, and persons regularly employed for not more the 24 hours per week" (27 employees in unit) (*Having regard to the agreement of the parties*)

Unit #2: "all registered and graduate nurses regularly employed for not more than 24 hours per week in a nursing capacity by the respondent at Grimsby, save and except Head Nurse and Supervisors and persons above the rank of Head Nurse and Supervisor, Inservice Director, Infection Control Director - Day Co-ordinator, Director of Discharge Planning Services, and Employee Health Nurse" (64 employees in unit) (*Having regard to the agreement of the parties*)

**1268-88-R:** Alliance Employees' Union (Applicant) v. Customs Excise Union Douanes Accise (Respondent)

Unit: "all employees of the respondent at Ottawa, save and except *supervisors, persons above the rank of supervisor* and persons for whom any trade union held bargaining rights as of August 23, 1988" (5 employees in unit) (*Having regard to the agreement of the parties*)

**1705-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Siding I.P.E. Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (25 employees in unit)

**0740-89-R:** IWA-Canada (Applicant) v. Carrail Constructors Ltd. (Respondent)

Unit: "all employees of the respondent in the District of Thunder Bay and the District of Kenora, save and except foremen, persons above the rank of foreman, office, clerical and sales staff" (9 employees in unit) (*Having regard to the agreement of the parties*)

**0917-89-R:** International Brotherhood of Painters & Allied Trades (Applicant) v. Nor-Vac Industrial Services Ltd., L.S. Kosowan Ltd. (Respondents) v. Group of Employees (Objectors)

Unit #1: "all employees of the respondent employed in and out of the City of Sudbury, save and except foremen, persons above the rank of foreman, office, clerical and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (8 employees in unit) (*Having regard to the agreement of the parties*)



Unit #2: “all employees of the respondent employed in and out of the City of Sudbury regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen, persons above the rank of foreman, office, clerical and sales staff” (10 employees in unit) (*Having regard to the agreement of the parties*)

**1058-89-R:** International Brotherhood of Electrical Workers, Local 115 (Applicant) v. 659367 Ontario Inc. c.o.b. as G & S General Contractors (Respondent)

Unit: “all electricians and electricians’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians’ apprentices in the employ of the respondent in all sectors of the construction industry in the geographic Townships of Elizabethtown, Augusta and Edwardsburg and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (4 employees in unit)

**1094-89-R:** Retail, Wholesale & Department Store Union, AFL:CIO:CLC: (Applicant) v. Western Inventory Services Ltd. (Respondent)

Unit: “all employees of the respondent at or out of Metropolitan Toronto, save and except Inventory Manager, persons above the rank of Inventory Manager, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period” (152 employees in unit)

**1105-89-R:** Ontario English Catholic Teachers’ Association (Applicant) v. Lambton County Roman Catholic Separate School Board (Respondent)

Unit: “all occasional teachers employed by the respondent in the County of Lambton, save and except persons who, when they are employed as substitutes for other teachers, are teachers as defined in the *School Boards and Teachers Collective Negotiations Act*” (136 employees in unit) (*Having regard to the agreement of the parties*)

**1166-89-R:** United Food & Commercial Workers International Union, AFL:CIO:CLC: (Applicant) v. Barnesdale Markets Ltd. (Respondent)

Unit #1: “all employees of the respondent in the City of Hamilton, save and except Assistant Store Manager, and Produce Department Manager, those above the rank of Assistant Store Manager, and Produce Department Manager, office and clerical staff and all employees regularly employed for not more than 24 hours per week” (23 employees in unit)

Unit #2: “all employees of the respondent in the City of Hamilton regularly employed for not more than 24 hours per week, save and except Assistant Store Manager, and Produce Department Manager, those above the rank of Assistant Store Manager, and Produce Department Manager and office and clerical staff” (16 employees in unit)

**1219-89-R:** Ontario Nurses’ Association (Applicant) v. George St. L. McCall Chronic Care Wing of the Queensway General Hospital (Respondent)

Unit #1: “all registered and graduate nurses employed in a nursing capacity by the respondent at George St. L. McCall Chronic Care Wing of the Queensway General Hospital in the Municipality of Metropolitan Toronto, save and except Head Nurses and those above the rank of Head Nurse and those regularly employed for not more than 24 hours per week” (24 employees in unit) (*Having regard to the agreement of the parties*)

Unit #2: (see *Bargaining Agents Certified Subsequent to a Post-Hearing Vote*)

**1282-89-R:** Retail, Wholesale & Department Store Union, AFL:CIO:CLC: (Applicant) v. Nestle Enterprises Ltd. (Respondent)

Unit: “all office, clerical, and laboratory employees of the respondent in its Nestle Division in Chesterville,

save and except supervisors, persons above the rank of supervisor, security guards, confidential secretary to the director of production, senior production scheduler, production scheduler, and students employed during the school vacation periods” (29 employees in unit) (*Having regard to the agreement of the parties*)

**1284-89-R:** Toronto Typographical Union No. 91, Affiliated Local of the Communications Workers of America, Printing, Publishing and Media Workers Sector (Applicant) v. Modern Wrappings Ltd. (Respondent)

Unit: “all employees of the respondent in the Municipality of Metropolitan Toronto, save and except production supervisors, persons above the rank of production supervisor, office and sales staff” (40 employees in unit) (*Having regard to the agreement of the parties*)

**1344-89-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Leo Alaire & Sons Ltd. (Respondent)

Unit: “all employees of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees of the respondent in all sectors of the construction industry within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, excluding the industrial, commercial and institutional sector engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors, and all construction labourers and truck drivers within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, save and except non-working foremen and persons above the rank of non-working foreman” (117 employees in unit)

**1346-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Vince Ryan General Contracting (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of the respondent in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**1348-89-R:** Ironworkers District Council of Ontario (Applicant) v. Les Spécialeurs B.D.S. Inc. (Respondent)

Unit: “all ironworkers and ironworkers’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all ironworkers and ironworkers’ apprentices in the employ of the respondent in all sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (12 employees in unit)

**1357-89-R:** United Steelworkers of America (Applicant) v. 442952 Ontario Inc., (BOURGET NURSING HOME DIVISION) (Respondent)

Unit: “all employees of the respondent in the Village of Bourget, save and except supervisors, persons above the rank of supervisor, registered and graduate nurses, office and clerical staff” (38 employees in unit) (*Having regard to the agreement of the parties*)

**1378-89-R:** Labourers’ International Union of North America, Local 607 (Applicant) v. P.B. Rombough Ltd. (Respondent)

Unit: “all construction labourers in the employ of the respondent in all sectors of the construction industry in the Township of Carmichael and the surrounding Townships of Shackleton, Haggart, Sydere, Laidlaw, Ford, Stringer and MacVicar in the District of Cochrane, excluding the industrial, commercial and institutional sec-

tor, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

**1384-89-R:** Union of Labour Representatives of Ontario (Applicant) v. Brotherhood of Maintenance of Way Employees, C.N. Eastern Lines System Federation (Respondent)

Unit: "all office and clerical staff of the respondent in the City of Ottawa, save and except persons employed for not more than 24 hours per week and students employed during the school vacation period" (2 employees in unit) (*Having regard to the agreement of the parties*)

**1402-89-R:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 (Applicant) v. Pro Force Mechanical Ltd. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (15 employees in unit)

**1404-89-R:** Canadian Union of Public Employees, Local 1281 (Applicant) v. York University Staff Association (Respondent)

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto, save and except elected or appointed representatives and managers and persons above the rank of manager" (2 employees in unit) (*Having regard to the agreement of the parties*)

**1407-89-R:** United Steelworkers of America (Applicant) v. Jax Mold & Machine Ltd. (Respondent)

Unit: "all employees of the respondent in the Town of Simcoe, save and except forepersons, persons above the rank of foreperson and office, clerical, sales and technical staff" (80 employees in unit) (*Having regard to the agreement of the parties*)

**1421-89-R:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Bundy of Canada Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all office employees of the respondent at Brampton, save and except supervisors, persons above the rank of supervisor, sales staff and controller" (12 employees in unit) (*Having regard to the agreement of the parties*)

**1425-89-R:** International Association of Machinists & Aerospace Workers (Applicant) v. Gibb Industries Inc. (Respondent)

Unit: "all employees of the respondent in the City of St. Thomas, save and except assistant foremen, persons above the rank of assistant foreman, office and sales staff" (20 employees in unit) (*Having regard to the agreement of the parties*)

**1426-89-R:** Niagara Health Care & Service Workers Union, Local 302 affiliated with the Christian Labour Association of Canada (Applicant) v. Lorelei Retirement Centre (Respondent)

Unit: "all employees of the respondent at St. Catharines, save and except supervisors, persons above the rank of supervisor, and office and clerical staff" (14 employees in unit) (*Having regard to the agreement of the parties*)

**1435-89-R:** Retail, Wholesale & Department Store Union, AFL:CIO:CLC: (Applicant) v. Peacock Lumber Ltd. (Respondent)

Unit: "all employees of the respondent in the City of Oshawa, save and except supervisors and those employ-



ees above the rank of supervisor, office and clerical staff, sales staff, students employed during the school vacation period and persons employed for less than 24 hours per week” (17 employees in unit) (*Having regard to the agreement of the parties*)

**1440-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Canadian Structural Restoration Ltd. (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**1441-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Mendes Junior Carpentry (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (4 employees in unit)

**1442-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Bowmanville Zoo (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

**1449-89-R:** London & District Service Workers’ Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Louise Marshall Hospital (Respondent)

Unit: “all paramedical employees of the respondent in the Town of Mount Forest, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor” (2 employees in unit) (*Having regard to the agreement of the parties*)

**1450-89-R:** Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters & Joiners of America (Applicant) v. N. A. Carpenters Ltd. (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (15 employees in unit)

**1455-89-R:** Office & Professional Employees International Union (Applicant) v. The Nipissing District

**Roman Catholic Separate School Board (Respondent) v. Canadian Union of Public Employees and its Local 1165 C.L.C. & Canadian Union of Public Employees and its Local 2799 (Intervenors)**

Unit: “all employees of the respondent in the District of Nipissing, Muskoka and Parry Sound, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and persons for whom any trade union held bargaining rights as of September 13, 1989” (86 employees in unit) (*Having regard to the agreement of the parties*)

**1469-89-R: Northern Ontario Workers Union (Applicant) v. Levert Industrial Services Inc. (Respondent)**

Unit: “all employees of the respondent in the City of Timmins, Ontario, save and except supervisors, persons above the rank of supervisor, and office and clerical staff” (5 employees in unit) (*Having regard to the agreement of the parties*)

**1513-89-R: Carpenters & Allied Workers, Local 27 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. New-Vision Renovations (Respondent)**

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (4 employees in unit)

**1523-89-R: United Steelworkers of America (Applicant) v. Spalding & Evenflo Canada Inc. (Respondent)**

Unit: “all employees of the respondent at its Evenflo Juvenile Products Canada division in the City of Brantford, save and except forepersons, persons above the rank of foreperson, office, clerical, sales staff and students employed during the school vacation period” (29 employees in unit) (*Having regard to the agreement of the parties*)

**1544-89-R: Labourers’ International Union of North America, Local 527 (Applicant) v. M-Con Products Inc. (Respondent)**

Unit: “all employees of the respondent in the Township of West Carleton, save and except foremen, persons above the rank of foreman, office and sales staff” (14 employees in unit) (*Having regard to the agreement of the parties*)

**1550-89-R: Labourers’ International Union of North America, Local 506 (Applicant) v. Torcom Construction Inc. (Respondent)**

Unit: “all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (9 employees in unit)

**1559-89-R: International Union of Operating Engineers, Local 793 (Applicant) v. Quality Construction & Excavating Inc. (Respondent)**

Unit: “all employees of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees of the respondent in all other sectors in the the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, and employees

engaged as surveyors, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**1564-89-R:** United Steelworkers of America (Applicant) v. General Signal Ltd. (Respondent)

Unit: “all employees of the respondent in its Mirtone Unit in the Municipality of Metropolitan Toronto, save and except forepersons, persons above the rank of foreperson, office, clerical, sales and field service staff, and students employed during the school vacation period” (105 employees in unit) (*Having regard to the agreement of the parties*)

**1580-89-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Russell H. Stewart Construction Company Ltd. (Respondent)

Unit: “all employees of the respondent in the Township of Manvers, save and except superintendents, persons above the rank of superintendent, and students employed during the school vacation period” (36 employees in unit) (*Having regard to the agreement of the parties*)

**1607-89-R:** Sheet Metal Workers’ International Association, Local 47 (Applicant) v. Trans-Canada Waterproofing (Respondent)

Unit: “all employees of the respondent engaged in roofing in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees of the respondent engaged in roofing in all other sectors in the the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman” (4 employees in unit)

**1630-89-R:** Labourers’ International Union of North America, Local 183 (Applicant) v. Erro-Wood Construction Ltd. (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**1678-89-R:** Labourers’ International Union of North America, Local 527 (Applicant) v. Centre de Céramique et de Marbre Italbec Inc. (Respondent)

Unit: “all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of the respondent in all sectors of the construction industry in the the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**Bargaining Agents Certified Subsequent to a Pre-Hearing Vote**

**0676-89-R:** Independent Canadian Transit Union (Applicant) v. Trilia Centres Inc. (Respondent)

Unit: “all maintenance and janitorial staff employed by the respondent at Carlingwood Shopping Centre in the City of Ottawa, save and except supervisors, persons above the rank of supervisor and students employed during the school vacation period” (14 employees in unit)

Number of names of persons on revised voters’ list	13
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	9
Number of ballots marked against incumbent	1



**0687-89-R:** Ontario Public School Teachers' Federation (Applicant) v. The East Parry Sound Board of Education (Respondent)

Unit: "all occasional teachers employed by the respondent in its elementary panel in the Region of East Parry Sound, save and except persons who, when they are employed as substitutes for other teachers, are teachers as defined in the *School Boards and Teachers Collective Negotiations Act*" (52 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on list as originally prepared by employer	49
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0

**1133-89-R:** United Steelworkers of America (Applicant) v. Hôpital géneéral de Hawkesbury & District General Hospital Inc. (Respondent) v. Canadian Union of Operating Engineers & General Workers, Local 111 (Intervener)

Unit: "all office and clerical employees regularly employed by the Hôpital géneéral de Hawkesbury & District General Hospital Inc. in Hawkesbury, Ontario, save and except the Secretary of the Executive Director, the Secretary of the Director of Fiscal Services, the Secretary of the Director of Human Resources, the Secretary of the Director of Nursing, the Secretary of the Director of the Hospital Services, the Secretary of the Chief of Medical Staff, the Administrative Assistant of the Adult Psychological Centre, supervisors and persons above the rank of supervisor" (40 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	40
Number of persons who cast ballots	25
Number of ballots marked in favour of applicant	25
Number of ballots marked in favour of intervener	0

**1195-89-R:** United Steelworkers of America (Applicant) v. Alliance of Canadian Cinema, Television & Radio Artists (ACTRA) (Respondent) v. Staff Association of ACTRA (SAA) (Intervener)

Unit: "all persons employed or engaged by ACTRA in Ottawa and Toronto except the General Secretary, the National Executive Director - Performers, the National Executive Director - Writers, the National Executive Director - Guild of Broadcast Journalists and Researchers, Director of Finance and Administration, those represented by the OPEIU, and the members of ACTRA engaged to perform temporary stewarding assignments" (21 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	17
Number of ballots marked in favour of applicant	14
Number of ballots marked in favour of intervener	3

**1252-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Centrac Industries Ltd. (Respondent)

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto, save and except forepersons, persons above the rank of forepersons, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period and office, clerical and sales staff" (204 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	202
Number of persons who cast ballots	180
Number of segregated ballots cast by persons whose names appear on voters' list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	117
Number of ballots marked against applicant	53
Ballots segregated and not counted	8

**1285-89-R:** Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local 880 (Applicant) v. Canada Building Materials Company (Respondent) v. Canadian Brotherhood of Railway Transport & General Workers (Intervener)

Unit: "all employees of the respondent in Chatham, Ontario, save and except foremen, persons above the rank of foreman, office staff, and sales staff" (19 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	21
Number of ballots marked in favour of applicant	15
Number of ballots marked in favour of intervener	6

**1410-89-R:** Canadian Union of Operating Engineers & General Workers (Applicant) v. The Cadillac Fairview Corporation Ltd. (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener)

Unit: "all Stationary Engineers, Refrigeration Operators and Trainee Operators in the Toronto-Dominion Centre in Metropolitan Toronto, save and except Assistant Chief Engineer and persons above the rank of Assistant Chief Engineer" (17 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	18
Number of persons who cast ballots	16
Number of ballots marked in favour of applicant	16
Number of ballots marked in favour of intervener	0

### **Bargaining Agents Certified Subsequent to a Post-Hearing Vote**

**1693-87-R:** Labourers' International Union of North America, Local 1089 (Applicant) v. Catalytic Maintenance Inc. (Respondent)

Unit: "all employees of the respondent at the Polysar Limited, Corunna site, at Corunna, Ontario, save and except foremen, persons above the rank of foreman, office, clerical and technical, engineering and sales staff, and persons for whom any trade union held bargaining rights on September 21, 1987" (30 employees in unit)

Number of names of persons on list as originally prepared by employer	13
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0

**2455-87-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Wraymar Construction & Rental Sales Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same in all sectors of the construction industry, save and except the industrial, commercial and institutional sector, in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), save and except non-working foremen and persons above the rank of non-working foreman" (22 employees in unit)

Number of names of persons on list as originally prepared by employer	17
Number of persons who cast ballots	17
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	16
Number of segregated ballots cast by persons whose names appear on voters' list	1
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	15
Ballots segregated and not counted	1

**0667-89-R:** United Food & Commercial Workers International Union, Local 175 (Applicant) v. T.C.C. Bottling Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent at Stratford, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (12 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on list as originally prepared by employer	10
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	4

**0788-89-R:** Hotels, Clubs, Restaurants, Taverns, Employees' Union, Local 261 (Applicant) v. The Hotel Roxborough (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent at 123 Metcalfe Street in the City of Ottawa, save and except department heads, persons above the rank of department head, office and clerical staff and sales office staff" (59 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	55
Number of persons who cast ballots	34
Number of segregated ballots cast by persons whose names appear on voters' list	1
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	12

**1219-89-R:** Ontario Nurses' Association (Applicant) v. George St. L. McCall Chronic Care Wing of the Queensway General Hospital (Respondent)

Unit #1: (see *Bargaining Agents Certified Without Vote*)

Unit #2: "all registered and graduate nurses regularly employed for not more than 24 hours per week, employed in a nursing capacity by the respondent at the George St. L. McCall Chronic Care Wing of the Queensway General Hospital in the Municipality of Metropolitan Toronto, save and except Head Nurses and those above the rank of Head Nurse" (22 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	28
Number of persons who cast ballots	5
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	1

**1286-89-R:** Teamsters Local No. 419 (Applicant) v. Sterling Packers Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all office employees at the respondent's Confederation Freezers division warehouse in Brampton, save and except supervisors, those above the rank of supervisor, sales staff, persons employed for not more than 24 hours per week and students employed during the school vacation period" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	11
Number of persons who cast ballots	11
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	4

### Applications for Certification Dismissed Without Vote

**1468-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. 162706 Canada Inc. (Respondent) (29 employees in unit)

**0276-89-R:** Association des enseignantes et des enseignants suppléants d'Ottawa-Carleton élémentaire



seüpareüe (Applicant) v. Conseil scolaire de langue française d'Ottawa-Caleton (section catholique) (Respondent) (250 employees in unit)

**0631-89-R:** Labourers' International Union of North America, Local 506 (Applicant) v. PCL Constructors Eastern Inc. (Respondent) (13 employees in unit)

**1246-89-R, 1248-89-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. M. Pickard Construction Company Ltd. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) v. Group of Employees (Objectors) (2 employees in unit)

**1468-89-R:** United Food & Commercial Workers International Union, AFL:CIO:CLC: (Applicant) v. Canada Dry Bottling Company Ltd. (Respondent) (29 employees in unit)

**1483-89-R:** Carpenters & Allied Workers, Local 27 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Dale Mann Ltd. (Respondent) v. Group of Employees (Objectors) (7 employees in unit)

**1547-89-R:** London & District Service Workers' Union, Local 220, S.E.I.U., AFL:CIO:CLC: (Applicant) v. Durham Memorial Hospital (Respondent) v. Group of Employees (Objectors) (5 employees in unit)

### Applications for Certification Dismissed Subsequent to a Pre-Hearing Vote

**1076-89-R:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Munro Auto Equipment Co. of Canada (Respondent)

Unit: "all employees of the respondent in the City of Owen Sound, save and except supervisors, persons above the rank of supervisor, office, clerical, technical and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (516 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	549
Number of persons who cast ballots	511
Number of spoiled ballots	12
Number of ballots marked in favour of applicant	187
Number of ballots marked against applicant	312

**1095-89-R:** Retail, Wholesale & Department Store Union, AFL:CIO:CLC: (Applicant) v. Golden Mill Bakery Inc. (Respondent)

Unit: "all employees of the respondent in the City of Hamilton, save and except forepersons, persons above the rank of foreperson, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (27 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	24
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	12

**1283-89-R:** Canadian Union of Public Employees (Applicant) v. The Kent County Roman Catholic Separate School Board (Respondent)

Unit: "all maintenance, service and plant operations employees of the respondent in the County of Kent, Ontario, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period, office, clerical and technical staff and persons for which any trade union held bargaining rights as of August 17, 1989" (43 employees in unit)

Number of names of persons on revised voters' list	49
Number of persons who cast ballots	45
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	24

### **Applications for Certification Dismissed Subsequent to a Post-Hearing Vote**

**2938-88-R:** Canadian Union of Public Employees (Applicant) v. The Tillsonburg Parks, Community Centre & Recreation Commission (Respondent)

Unit: "all employees of the respondent in the Town of Tillsonburg, save and except assistant supervisors, persons above the rank of assistant supervisor, office staff, employees regularly employed for not more than 24 hours per week and students employed during the school vacation period" (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	12
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	4

### **Applications For Certifications Withdrawn**

**0051-89-R:** Teamsters Local 938 (Applicant) v. Maris Transport Ltd., Maris Transport Ltd. c.o.b. Quality Releasing Services, Nu-Car Releasing Company Ltd., Transcocan Releasing Ltd., & Transco Inc. (Respondents)

**0566-89-R:** United Food & Commercial Workers International Union (Applicant) v. M.G.I. Packers Inc. (Respondent) v. MGI Packers Employees Association (Intervener)

**1265-89-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Manion & Welch Electric (Respondent)

**1315-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 1669 (Applicant) v. Frank Gigliotti Contracting and North South Construction Ltd. (Respondent)

**1415-89-R:** Canadian Brotherhood of Railway, Transport & General Workers (Applicant) v. Laidlaw Transit Ltd. (Respondent)

**1430-89-R:** Textile Processors, Service Trades, Health Care, Professional & Technical Employees International Union, Local 351 (Applicant) v. Commonwealth Hospitality Ltd./Hospitalite Commonwealth Ltee. (Respondent) v. Group of Employees (Objectors)

**1528-89-R:** Service Employees Union, Local 183 (Applicant) v. Sisters of St. Joseph - Mount St. Joseph of the Diocese (Respondent)

**1566-89-R:** Transport Drivers, Warehousemen & General Workers, Local 106 (Teamsters) (Applicant) v. WMI - Hull Ottawa (Respondent)

**1638-89-R:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (Applicant) v. 598956 Ontario Ltd., c.o.b. as Anderson-Webb (Respondent)

**1655-89-R:** Laundry & Linen Drivers & Industrial Workers Local 847, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Orangeroot of Canada c.o.b. Howard Johnson Toronto East (Respondent)

**1790-89-R:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Odstrum Manufacturing Company Ltd. (Respondent)

## **APPLICATION FOR FIRST CONTRACT ARBITRATION**

**0989-89-FC; 0990-89-FC:** Retail, Wholesale & Department Store Union, AFL:CIO:CLC (Applicant) v. Hamilton Yellow Cab (Respondent) (*Granted*)

**1323-89-FC:** United Steelworkers of America (Applicant) v. Huron Alloys Inc. (Respondent) (*Withdrawn*)

**1521-89-FC:** United Brotherhood of Carpenters & Joiners of America, Local 93 (Applicant) v. Garbo Construction (Respondent) (*Granted*)

## **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**2718-87-R:** International Union of Bricklayers & Allied Craftsmen, Local 2 (Applicant) v. The Corporation of the City of Etobicoke Public Library Board, The Corporation of the City of Etobicoke (Respondents) (*Dismissed*)

**0708-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 38 (Applicant) v. Ameri-Can Motel Ltd. and 603185 Ontario Ltd. (Respondents) (*Dismissed*)

**0963-89-R:** Labourers' International Union of North America, Local 607 (Applicant) v. Rock Excavating (Sudbury) Ltd. and L. J. Bardswich Ltd. and 353080 Ontario Ltd. (Respondents) (*Withdrawn*)

**1009-89-R:** Sheet Metal Workers' International Association, Local 504 (Applicant) v. Trans-North Industrial Siding Inc., and Trans-North Industrial Siding (1989) Inc. (Respondents) (*Granted*)

**1311-89-R:** Labourers International Union of North America, Ontario Provincial District Council, Labourers International Union of North America, Local 1081 (Applicants) v. A. Gorgi Masonry (1976) Ltd., Gorgi Construction Ltd. (Respondents) (*Granted*)

**1476-89-R:** Glass, Molders, Pottery, Plastics & Allied Workers International Union (Applicant) v. Galtaco Inc., Galtaco Redlaw Castings Corp., Contor Industries Ltd., and Dorr-Oliver Canada Ltd. (Respondents) v. United Steelworkers of America (Intervener) (*Withdrawn*)

## **SALE OF A BUSINESS**

**0082-87-R:** United Food & Commercial Workers International Union, Locals 175 & 633 (Applicant) v. Steinberg Inc., Miracle Food Mart Division and Oshawa Holdings Ltd., c.o.b. as Dutch Boy Foods (Respondents) (*Dismissed*)

**2718-87-R:** International Union of Bricklayers & Allied Craftsmen, Local 2 (Applicant) v. The Corporation of the City of Etobicoke Public Library Board, The Corporation of the City of Etobicoke (Respondents) (*Dismissed*)

**0708-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 38 (Applicant) v. Ameri-Can Motel Ltd. and 603185 Ontario Ltd. (Respondents) (*Dismissed*)

**0963-89-R:** Labourers' International Union of North America, Local 607 (Applicant) v. Rock Excavating (Sudbury) Ltd. and L. J. Bardswich Ltd. and 353080 Ontario Ltd. (Respondents) (*Withdrawn*)

**1311-89-R:** Labourers International Union of North America, Ontario Provincial District Council, Labourers International Union of North America, Local 1081 (Applicants) v. A. Gorgi Masonry (1976) Ltd., Gorgi Construction Ltd. (Respondents) (*Granted*)



**1009-89-R:** Sheet Metal Workers' International Association, Local 504 (Applicant) v. Trans-North Industrial Siding Inc., and Trans-North Industrial Siding (1989) Inc. (Respondents) (*Granted*)

**1314-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 1669 (Applicant) v. Frank Gigliotti Contracting and North South Construction Ltd. (Respondent) (*Withdrawn*)

**1475-89-R:** Glass, Molders, Pottery, Plastics & Allied Workers International Union (Applicant) v. Galtaco Inc., Brantford Foundry Division (Respondent) v. United Steelworkers of America (Intervener) (*Withdrawn*)

## CROWN TRANSFER ACT

**1073-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in Right of Ontario as represented by the Ministry of Natural Resources, and Smith Forestry Consultants (Respondents) (*Granted*)

**1329-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in Right of Ontario as represented by the Ministry of Natural Resources, and Hotchkiss Forestry Enterprises (Respondents) (*Granted*)

**1639-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in Right of Ontario as represented by the Ministry of Natural Resources, and Nicol Seguin (Respondents) (*Granted*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**0759-89-R:** Francine Mailhot (Applicant) v. Graphic Communications International Union, Local 588 (Respondent) v. Carleton University (Intervener)

Unit: "all the production employees employed in the printing and bindery sections of graphic service at Carleton University in the City of Ottawa, save and except supervisors, persons above the rank of supervisor, office staff, students hired during the school vacation and persons regularly employed for 24 hours or less per week and persons covered by other collective agreements" (16 employees in unit) (*Having regard to the agreement of the parties*) (*Granted*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	16

**0779-89-R:** Robert Horton (Applicant) v. United Food & Commercial Workers International Union, Local 617P (Respondent) v. Jacmorr Manufacturing (Intervener)

Unit: "all employees of the intervener employed at Kitchener, Ontario, save and except foremen, persons above the rank of foremen, office staff, plant clerical staff, sales staff, technical staff, (such as measurement staff, Q.C. Technician staff, such as professional engineers, engineering technicians, designers, draftsmen) and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (72 employees in unit) (*Granted*)

Number of names of persons on list as originally prepared by employer	86
Number of persons who cast ballots	67
Number of ballots marked in favour of respondent	29
Number of ballots marked against respondent	38

**0825-89-R:** Nancy Pellegrino and all other employees, Easy Enterprises (Applicant) v. Laundry & Linen Drivers & Industrial Workers, Local 847 affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent) v. Easy Enterprises Inc. (Intervener) v. Group of Employees (Objectors)

Unit #1: "all employees of the company at Concord, Ontario, save and except foremen, persons above the

rank of foreman, office, clerical and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (38 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	28
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	27
Number of segregated ballots cast by persons whose names appear on voters' list	1
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	26

Unit #2: "all employees of the company at Concord, Ontario regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen, persons above the rank of foremen, office, clerical and sales staff" (23 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	10
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	8
Number of segregated ballots cast by persons whose names appear on voters' list	2
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	8

**0871-89-R:** Michael Waters (Applicant) v. Canadian Textiles & Chemical Union (Respondent) v. Edwards Books & Art Ltd. (Intervener) v. Group of Employees (Objectors)

Unit: "all employees of Edwards Books & Art Limited in the Municipality of Metropolitan Toronto, save and except managers, persons above the rank of manager, and office staff" (25 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	20
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	16

**0947-89-R:** Wayne Jackson (Applicant) v. United Rubber, Cork, Linoleum & Plastic Workers of America, Local 232, AFL-CIO (Respondent) v. Bridgestone (Canada) Inc. (Intervener)

Unit: "all employees of the intervener in its Regional Municipality of Peel facility, save and except foremen, foreladies, persons above the rank of foreman, forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (7 employees in unit) (*Granted*)

Number of names of persons on list as originally prepared by employer	6
Number of persons who cast ballots	6
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	6

**1343-89-R:** Wilma Brady (Applicant) v. Service Employees Union, Local 183 (Respondent) v. February 11 Interactive Publishing Ltd. (Intervener) (*Granted*)

**1355-89-R:** Mr. Robert P. Voyer (Applicant) v. United Food & Commercial Workers International Union, Local 175 (Respondent) v. The Corporation of the Township of East Ferris (Intervener) (7 employees in unit) (*Dismissed*)

**1366-89-R:** Henia Krygier (Applicant) v. Retail, Wholesale & Department Store Union, AFL-CIO:CLC: and

its Local 414 (Respondent) v. VS Services Ltd. (Intervener) v. Group of Employees (Objectors) (19 employees in unit) (*Dismissed*)

**1535-89-R:** Employees of Canadian Tack & Nail Ltd. (Applicant) v. United Steelworkers, Local 4252 (Respondent) v. Canadian Tack & Nail Ltd. (Intervener) (10 employees in unit) (*Granted*)

**1661-89-R:** Qamarul Hamid (Applicant) v. United Steelworkers of America (Respondent) (35 employees in unit) (*Granted*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

**1694-89-U; 1695-89-U:** Mitsubishi Electronics Industries Canada Inc. (Applicant) v. Communications & Electrical Workers of Canada & its Local 532 et al (Respondents) (*Withdrawn*)

**1754-89-U:** The Corporation of the City of Cambridge (Applicant) v. Amalgamated Transit Union, Local 1608, Russell Abernethy, Raymond Blackmore & Russell Falkiner (Respondents) (*Granted*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**2305-87-U:** Teamsters, Chauffeurs, Warehousemen & Helpers, Local 91, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Nepean Bus Lines Inc. (Respondent) v. Dave Loney (Objector) (*Withdrawn*)

**1787-88-U:** Canadian Union of Postal Workers (Complainant) v. Elf Von Dehn, Best Cleaners & Contractors, Bob Kingsley, Canada Post Corporation (Respondents) (*Withdrawn*)

**2255-88-U:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Complainant) v. Siding I.P.E. Ltd. (Respondent) (*Granted*)

**2382-88-U:** Energy & Chemical Workers Union (Complainant) v. G. Lemaire & Chinook Chemicals Company (Respondent) (*Dismissed*)

**2700-88-U:** Retail, Wholesale & Department Store Union, AFL:CIO:CLC: (Complainant) v. U-Need-A Cab Ltd., 715341 Ontario Ltd. c.o.b. as M & M Holdings and M & M Auto Centre, Ron Martin & Leroy Dixon (Respondents) (*Dismissed*)

**3163-88-U:** Douglas Leader (Complainant) v. The Employees' Association of the Hammond Manufacturing Company Ltd. (Respondent) v. Hammond Manufacturing Company Ltd. (Intervener) (*Dismissed*)

**0278-89-U:** Ontario Public Service Employees Union (Complainant) v. B & D Powell Management Ltd., o/a Kanata Ambulance Service (Respondent) (*Withdrawn*)

**0393-89-U:** United Food & Commercial Workers Union, Local 175 (Complainant) v. Abbott Laboratories Ltd. (Respondent) (*Withdrawn*)

**0433-89-U:** Gilles La Prade (Complainant) v. Ottawa Civic Hospital (Respondent) (*Withdrawn*)

**0444-89-U:** John Athan (Complainant) v. Amalgamated Transit Union, Local 113 Toronto Transit Commission (Respondent) (*Withdrawn*)

**0570-89-U:** John Fenwick (Complainant) v. Robert Ryan - Chairman C.A.W. - Canada, Local #303 (Respondent) (*Dismissed*)

**0657-89-U:** Energy & Chemical Workers Union, Local 39 (Complainant) v. Maple Leaf Mills Ltd. (Guelph, Ontario) Pet Food Division (Respondent) (*Withdrawn*)



**0658-89-U:** Amalgamated Clothing & Textile Workers Union - Toronto Joint Board (Complainant) v. Canadian Union Supply (Respondent) (*Withdrawn*)

**0785-89-U:** Cement, Lime, Gypsum & Allied Workers Division of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local 576 (Complainant) v. Hamilton Automatic Vending Company Ltd. and Patricia Sanderson & Paul Sanderson (Respondents) (*Withdrawn*)

**0806-89-U:** Ontario Nurses' Association (Complainant) v. Reliacare Inc., c.o.b. Port Dover Health Care Centre (Respondent) v. London & District Service Workers Union, Local 220 (Intervener) (*Withdrawn*)

**0883-89-U:** United Brotherhood of Carpenters & Joiners of America, Local 3054 (Complainant) v. Erie Flooring & Wood Products (Respondent) (*Dismissed*)

**0984-89-U:** Mr. Perry Shean (Complainant) v. Uxbridge/Stouffville Ambulance Service, 790711 Ontario Ltd., Mr. Peter Carell, Manager (Respondent) (*Withdrawn*)

**0985-89-U:** Mr. Scott E. Andrews (Complainant) v. Uxbridge/Stouffville Ambulance Service, 790711 Ontario Ltd., Mr. Peter Carell, Manager (Respondent) (*Withdrawn*)

**1004-89-U:** Max Brinco (Complainant) v. Labourer's International of North America, Local 506 (Respondent) (*Dismissed*)

**1005-89-U:** James McKay (Complainant) v. Labourer's International of North America, Local 506 (Respondent) (*Dismissed*)

**1006-89-U:** Bruce Stewart (Complainant) v. Labourer's International of North America, Local 506 (Respondent) (*Dismissed*)

**1114-89-U:** Shelley Lynn Lusk (Complainant) v. Service Employees International Union, Local 210 (Respondent) (*Dismissed*)

**1154-89-U:** Jerome G. Clare (Complainant) v. International Union of Operating Engineers, Local 793 (Respondent) (*Withdrawn*)

**1179-89-U:** Barb King (Complainant) v. Mark Whaley and Canadian Union of Public Employees, Local 1883 (Respondent) (*Withdrawn*)

**1180-89-U:** Emilio De Santis (Complainant) v. Canadian Union of Public Employees, Local 2221 (Respondent) v. Mario J. Calla - Costi-Ilas Immigrant Services (Intervener) (*Dismissed*)

**1230-89-U:** Robert La Chapelle Employee #22629 (Complainant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Wheel Trans Department) (Intervener) (*Dismissed*)

**1276-89-U:** Joitaram Patel (Complainant) v. Welland Chemical Ltd. and Energy & Chemical Workers Union, Local 914 (Respondents) (*Dismissed*)

**1281-89-U:** United Food & Commercial Workers Union, Local 175, A.F.L., C.I.O., C.L.C. (Complainant) v. National Systems of Baking Ltd. (Respondent) (*Withdrawn*)

**1324-89-U:** United Steelworkers of America (Complainant) v. Huron Alloys Inc. (Respondent) (*Withdrawn*)

**1328-89-U:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Complainant) v. Centrac Industries Ltd. (Respondent) (*Dismissed*)

**1342-89-U:** International Association of Machinists & Aerospace Workers (Complainant) v. Shadwood Enterprises Ltd. (Respondent) (*Withdrawn*)

**1360-89-U:** District Council, Cloakmakers Dress & Sportswear Industry, of the International Ladies Garment Workers' Union and International Ladies Garment Workers' Union, Locals 14, 83 & 92 (Complainants) v. Toronto Dress & Sportswear Manufacturers' Guild Inc. and Jac An Formals Ltd. (Respondents) (*Withdrawn*)

**1382-89-U:** Teamsters Local 938 (Complainant) v. Airlift Limousine Service Ltd. (Respondent) (*Withdrawn*)

**1394-89-U:** Stamatis Stathis (Complainant) v. Canadian Automobile Workers, Local 195, Fabricated Steel Products (Windsor) Ltd. (Respondents) (*Dismissed*)

**1427-89-U:** Labourers' International Union of North America, Local 607 (Complainant) v. 539711 Ontario Ltd. o/a Sentinel Contracting Ltd. (Respondent) (*Withdrawn*)

**1431-89-U:** Jose Manuel DeSousa (Complainant) v. United Steelworkers of America, Local 9139 (Respondent) (*Withdrawn*)

**1438-89-U:** John F. Dishart (Complainant) v. Local 673 D. H. Unit Boeing of Canada Ltd. DeHavilland Division (Respondent) (*Withdrawn*)

**1464-89-U:** Catalytic Maintenance Inc. (Complainant) v. Doug Janson, Lonnie Goodhand, Claus Cherski, Bev Connolly, Joe St. Marsailles, Mike Rose and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local 128; United Brotherhood of Carpenters & Joiners of America, Locals 1592 & 1256; International Union of Operating Engineers, Local 793; International Association of Heat Frost Insulators & Asbestos Workers, Local 95; United Association of Journeymen & Apprentices of the Plumbing Pipefitting Industry of the U.S. & Canada, Local 663 (Respondents) (*Withdrawn*)

**1525-89-U:** United Steelworkers of America (Complainant) v. Community Lifecare Inc. (Respondent) (*Withdrawn*)

**1539-89-U:** Arthur Witt (Complainant) v. CAW Local 397 and Ladish Co. of Canada Ltd. (Respondents) (*Withdrawn*)

**1581-89-U:** Laurentian University Faculty Association (Complainant) v. Laurentian University of Sudbury (Respondent) (*Withdrawn*)

**1591-89-U:** United Steelworkers of America (Complainant) v. Aclo Compounders Inc. (Respondent) (*Withdrawn*)

**1597-89-U:** Dorothy Valentino, Laurie Benjamin, Leslie Chalut (Complainants) v. Service Employees Union, Local 210, Earl Knipple (Respondents) (*Withdrawn*)

**1740-89-U:** Mireille Parisien (Complainant) v. Hotel's, Clubs, Restaurant, Tavern, Employees Union, Local 261 (Respondent) (*Withdrawn*)

**1749-89-U:** Stephen Richter (Complainant) v. Terry Finch and Heidi Kriens (Respondents) (*Dismissed*)

**1752-89-U:** Carol Juneau (Complainant) v. Hotel's, Clubs, Restaurant, Tavern, Employees Union, Local 261 (Respondent) (*Withdrawn*)

## JURISDICTIONAL DISPUTES

**1121-89-JD:** The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers of America, Local 128 (Complainant) v. Electrical Power Systems Construction Association, Ontario Hydro, and The International Brotherhood of Electrical Workers (Respondents) v. The United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada & its Local 463 (Intervener) (*Withdrawn*)

**1131-89-JD:** International Association of Bridge, Structural & Ornamental Iron Workers, Local 765 (Complainant) v. Webb-Stiles Company & Ledow Co. Inc. (Respondent) v. Millwright District Council of Ontario United Brotherhood of Carpenters & Joiners of America, on its own behalf & on behalf of its Local 1410 (Intervener) (*Dismissed*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**0512-89-M:** Ontario Nurses' Association (Applicant) v. Queen Elizabeth Hospital, Toronto (Respondent) (*Withdrawn*)

**1017-89-M:** Ontario Public Service Employees Union (Applicant) v. Access Community Services Inc. (Respondent) (*Dismissed*)

**1018-89-M:** Sudbury Memorial Hospital (Applicant) v. Ontario Nurses' Association (Respondent) (*Granted*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**0882-89-OH:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW - Canada) & its Local 1987 et al (Complainant) v. Pebra Inc. (Respondent) (*Dismissed*)

**1275-89-OH:** Peter Crosby, Ministry of Natural Resources Pilot (Complainant) v. Ministry of Natural Resources (Respondent) (*Withdrawn*)

## COLLEGES COLLECTIVE BARGAINING ACT

**0760-89-U:** Ontario Public Service Employees Union, Local 653 (Complainant) v. Northern College of Applied Arts & Technology (Respondent) (*Withdrawn*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**0379-88-G:** International Brotherhood of Electrical Workers, Local 1788 (Applicant) v. The Electrical Power Systems Construction Association (E.P.S.C.A.) & Ontario Hydro (Respondent) (*Dismissed*)

**2071-88-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Eclipse Excavating & Sales Ltd. (Respondent) (*Granted*)

**3179-88-G:** International Union of Bricklayers & Allied Craftsmen & The Ontario Provincial Conference of The International Union of Bricklayers & Allied Craftsmen (Applicant) v. Calligaro Tile Company Ltd. (Respondent) (*Dismissed*)

**0073-89-G; 1155-89-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Buttcon Ltd. (Respondent) (*Granted*)

**0539-89-G:** International Brotherhood of Painters & Allied Trades, Local 205 (Applicant) v. Mack Coatings & Sandblasting Ltd. (Respondent) (*Granted*)

**0715-89-G:** Sheet Metal Workers' International Association, Local 562 - Ontario Sheet Metal Workers' & Roofers Conference (Applicant) v. Mark 1 Erectors (Respondent) (*Granted*)

**0962-89-G:** Labourers' International Union of North America, Local 607 (Applicant) v. Rock Excavating (Sudbury) Ltd. and L. J. Bardswich Ltd. and 353080 Ontario Ltd. (Respondents) (*Withdrawn*)

**1060-89-G:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 786 (Applicant) v. Dominion Bridge Co. (Respondent) (*Dismissed*)



**1102-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Power Contracting Inc. (Respondent) (*Withdrawn*)

**1138-89-G; 1458-89-G:** International Brotherhood of Painters & Allied Trades - Local 1795 Glaziers (Applicant) v. King Glass Ltd. & King Glass (Respondents) (*Granted*)

**1199-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 1669 (Applicant) v. Frank Gagliotti Contracting & North South Construction Ltd. (Respondent) (*Withdrawn*)

**1203-89-G; 1347-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. N.A.T. Interiors (Respondent) (*Granted*)

**1234-89-G:** Sheet Metal Workers' International Association, Local 504 (Applicant) v. Trans-North Industrial Siding (1989) Inc. (Respondent) (*Withdrawn*)

**1340-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Three Z Construction (Respondent) (*Withdrawn*)

**1358-89-G; 1549-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 785 (Applicant) v. McCall Contracting Inc. (Respondent) (*Granted*)

**1387-89-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Devon Structure (Respondent) (*Granted*)

**1444-89-G:** Carpenters' District Council of Toronto & Vicinity United Brotherhood of Carpenters & Joiners of America, on behalf of Local 27 (Applicant) v. 593601 Ontario Ltd. o/a Domingo's Contractor Carpenters (Respondent) (*Granted*)

**1448-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 628 (Applicant) v. Canmec Mechanical Contractors Ltd. (Respondent) (*Granted*)

**1454-89-G:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 721 (Applicant) v. State Contractors (Respondent) (*Withdrawn*)

**1459-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 853 (Applicant) v. G. & D. Fire Protection Services Ltd. (Respondent) (*Granted*)

**1461-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Peixoto Carpentry (Respondent) (*Withdrawn*)

**1463-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Phoenix Restoration (Respondent) (*Withdrawn*)

**1470-89-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Humbelco Corporation (Respondent) (*Granted*)

**1511-89-G:** International Brotherhood of Painters & Allied Trades, - District Council 46 & Local 1832 (Applicant) v. J.C.P. Painting & Associates (Respondent) (*Granted*)

**1512-89-G:** Carpenters & Allied Workers Local 27 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Melita Carpenters (Respondent) (*Withdrawn*)

**1530-89-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Co-Fo Concrete Forming Construction Ltd. (Respondent) (*Withdrawn*)

**1541-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 785 (Applicant) v. Losereit Sales & Services Ltd. (Respondent) (*Withdrawn*)

**1554-89-G:** Resilient Floor Workers, United Brotherhood of Carpenters & Joiners of America, Local 2965 (Applicant) v. Trump Carpet & Tile Inc. (Respondent) (*Withdrawn*)

**1561-89-G:** United Brotherhood of Carpenters & Joiners of America, Lake Ontario District Council (Applicant) v. Dale Acoustics (Respondent) (*Withdrawn*)

**1562-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. D.M. Architectural Contracting Ltd. (Respondent) (*Granted*)

**1587-89-G:** International Brotherhood of Electrical Workers, Local 773 of the IBEW Construction Council of Ontario (Applicant) v. Charron Electric Ltd. (Respondent) (*Granted*)

**1599-89-G:** International Brotherhood of Electrical Workers, Local 115 of the IBEW Construction Council of Ontario (Applicant) v. Nick Livingstone Electric Ltd. (Respondent) (*Granted*)

**1637-89-G:** Construction Workers Local 53, CLAC (Applicant) v. Poirier Electric Ltd. (Respondent) (*Withdrawn*)

**1665-89-G:** Labourers' International Union of North America, Local 527 (Applicant) v. BLP Construction Ltd. (Respondent) (*Granted*)

**1671-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 (Applicant) v. T. Beck Mechanical Services Ltd. (Respondent) (*Withdrawn*)

**1677-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 (Applicant) v. Lampert Plumbing Ltd. and The Metropolitan Plumbing & Heating Contractors Association Toronto (Respondents) (*Withdrawn*)

**1681-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Baldic Contractors Inc. (Respondent) (*Withdrawn*)

**1710-89-G:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 721 (Applicant) v. Freedom Valley Design Inc. (Respondent) (*Granted*)

**1720-89-G:** Drywall, Acoustic Lathing & Insulation, Local 675 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. M & M Brothers Contracting Ltd. (Respondent) (*Withdrawn*)

**1721-89-G:** Drywall, Acoustic Lathing & Insulation, Local 675 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Alstate Drywall Systems Ltd. (Respondent) (*Withdrawn*)

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**3149-87-R:** Ontario Public Service Employees Union (Applicant) v. Central Toronto Youth Services (Respondent) (*Dismissed*)

**0068-88-R:** Canadian Guards Association (Applicant) v. Pinkerton's of Canada Ltd. (Respondent) v. Richard Bibeault (Intervener #1) v. Inco Ltd. (Intervener #2) v. Attorney-General of Ontario (Intervener #3) (*Dismissed*)

**0218-88-U:** Sharon A. Mills (now Brown) (Complainant) v. The Corporation of the City of Hamilton, Association of Professional & Administrative Employees, Executive Association; C.U.P.E., Ottawa & Local 167

(Canadian Union of Public Employees), Human Resources Centre, The Regional Municipality of Hamilton-Wentworth & The Corp. of the City of Hamilton (Respondents) (*Dismissed*)

**0767-88-R:** Canadian Guards Association (Applicant) v. Pinkerton's of Canada Ltd. (Respondent) v. Inco Ltd. (Intervener #1) v. Attorney-General of Ontario (Intervener #2) (*Dismissed*)

**0956-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Barry Lightfoot (Respondents) (*Dismissed*)

**1149-88-R:** Canadian Guards Association (Applicant) v. National Protective Services Company Ltd. (Respondent) v. George Faulkenburg (Intervener #1) v. Inco Ltd. (Intervener #2) v. Attorney-General of Ontario (Intervener #3) (*Dismissed*)

**1484-88-R:** Canadian Guards Association (Applicant) v. Board of Management for the Metropolitan Toronto Zoo (Respondent) v. International Union United Plant Guards, Local 1962 (Intervener #1) v. Ron Saxton (Intervener #2) v. Inco Ltd. (Intervener #3) v. Attorney-General of Ontario (Intervener #4) (*Dismissed*)

**1552-88-R:** Canadian Guards Association (Applicant) v. Burns International Security Services Ltd. (Respondent) v. Gordon A. Southorn (Intervener #1) v. Inco Ltd. (Intervener #2) v. Attorney-General of Ontario (Intervener #3) (*Dismissed*)

**1617-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and John Knight and Lorraine Norris c.o.b. as Agassiz Forestry/Environmental Services (Respondents) (*Dismissed*)

**1884-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and John McCormack (Respondents) (*Dismissed*)

**1885-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Elsie McCormack (Respondents) (*Dismissed*)

**1906-88-U:** Mr. Ivan Gudelj (Complainant) v. Glass, Molders, Pottery, Plastics & Allied Workers International Union (Respondent) v. Canron Inc. (Intervener) (*Dismissed*)

**2261-88-R:** Canadian Guards Association (Applicant) v. Wackenhut of Canada Ltd. (Respondent) v. Shane Freeman (Intervener #1) v. Inco Ltd. (Intervener #2) v. Attorney-General of Ontario (Intervener #3) (*Dismissed*)

**2320-88-U:** Normand Dechamps (Complainant) v. Association of Professors of the University of Ottawa (Respondent) v. The University of Ottawa (Intervener) (*Dismissed*)

**2324-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in right of Ontario as represented by the Ministry of Government Services, and Wayne Forbes c.o.b. as Forbes Janitorial Services (Respondents) (*Dismissed*)

**2335-88-R:** Ontario Public Service Employees Union (Applicant) v. The Crown in right of Ontario as represented by the Ministry of Transportation, and Dunning Paving Ltd. (Respondents) (*Dismissed*)

**2666-88-R:** United Steelworkers of America (Applicant) v. Pinkerton's of Canada Ltd. (Respondent) v. Larry Bishop (Intervener #1) v. Inco Ltd. (Intervener #2) v. Attorney-General of Ontario (Intervener #3) (*Dismissed*)

**2822-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Century Fence Ltd. (Respondent) (*Dismissed*)



*Ontario Labour Relations Board,  
400 University Avenue,  
Toronto, Ontario  
M7A 1V4*

ISSN 0383-4778



CA20N  
LR  
D54

# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**December 1989**





## ONTARIO LABOUR RELATIONS BOARD

<i>Chair</i>	M.G. MITCHNICK
<i>Alternate Chair</i>	R.O. MACDOWELL
<i>Vice-Chairs</i>	M. BENDEL
	L. DAVIE
	N.V. DISSANAYAKE
	R.A. FURNESS
	O.V. GRAY
	R.J. HERMAN
	B. HERLICH
	R.D. HOWE
	B. KELLER
	P. KNOPF
	J. McCORMACK
	M. NAIRN
	K. O'NEIL
	K. PETRYSHEN
	N.B. SATTERFIELD
	I.M. STAMP
	G. SURDYKOWSKI
	S.A. TACON

### *Members*

J. ANDERSON	T. MEAGHER
B.L. ARMSTRONG	R.R. MONTAGUE
C.A. BALLENTINE	J.W. MURRAY
F.C. BURNET	W.S. O'NEILL
W.A. CORRELL	D.A. PATTERSON
K.S. DAVIES	H. PEACOCK
A.R. FOUCAULT	R.W. PIRRIE
W.N. FRASER	J. REDSHAW
W. GIBSON	K.V. ROGERS
P.V. GRASSO	J.A. RONSON
A. HERSHKOVITZ	M.A. ROSS
M. JONES	M. ROZENBERG
F. KELLY	J.A. RUNDLE
J. KENNEDY	G.O. SHAMANSKI
H. KOBRYN	R.M. SLOAN
J. KURCHAK	E.G. THEOBALD
J. LEAR	J. TRIM
D.A. MacDONALD	M. VUKOBRAT
W.J. McCARRON	S. WESLAK
C. McDONALD	W.H. WIGHTMAN
R.D. McMURDO	N.A. WILSON
	D.G. WOZNIAK

<i>Registrar</i>	T.A. INNISS
<i>Board Solicitors</i>	K.A. MacDONALD
	P.S. TOOP

# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

**A Monthly Series of Decisions from the  
Ontario Labour Relations Board**

**Cited [1989] OLRB REP. DECEMBER**

**EDITOR: PERCY TOOP**

Selected decisions of particular reference value are also reported in *Canadian Labour Relations Boards Reports*, Butterworth & Co., Toronto.

Typeset, Printed and Bound by Union Labour in Ontario





## CASES REPORTED

1.	Board of Education for the City of Etobicoke; Re C.U.P.E. ....	1203
2.	Boeing Canada/DeHavilland Division; Re Jill Bettes.....	1213
3.	Chinook Chemicals Company, G. Lemaire and; Re E.C.W.U.....	1218
4.	Hotel Dieu of St. Joseph's Hospital of Windsor; Re O.N.A. ....	1221
5.	King Glass Limited/King Glass; Re P.A.T., Local 1795 -Glaziers.....	1223
6.	Macdero Construction Limited; Re L.I.U.N.A., Local 183.....	1224
7.	Metropolitan Toronto Sewer and Watermain Contractors Association; Re I.U.O.E., Local 793; Re Ontario Concrete and Drain Contractors Association; Re L.I.U.N.A., Local 183; Re Teamsters' Union, Local Union 230; Re Metropolitan Toronto Road Builders Association; Re Canadian Automatic Sprinkler Association; Re U.A., Local 46; Re Ontario Pipe Trades Council of U.A.; Re U.A., Local 853; Re Metropolitan Toronto Apartment Builders Association; Re Toronto Construction Association, General Contractors Section; Re Sarnia Construction Association; Re Construction Association of Thunder Bay; Re Sudbury Construction Association; Re Electrical Power Systems Construction Association; Re Ontario Precast Concrete Manufacturers' Association; Re the Residential Low-Rise Forming Contractors Association of Metropolitan Toronto and Vicinity; Re The Heavy Construction Association of Toronto; Re Toronto Housing Labour Bureau .....	1226
8.	Mlakar, Maria; Re C.U.P.E., Local 79; Re The Municipality of Metropolitan Toronto .....	1246
9.	Real Carpenters; Re C.J.A., Local 27.....	1250
10.	St. Pierre, Jeanne; Re U.A.W., Local 444 and Chrysler Canada Ltd.....	1251
11.	Shearwall Forming (East) Ltd.; Re C.J.A., Local 27; Re the Form Work Council of Ontario; Re Automatic Structures Ltd. ....	1254
12.	U-Need-A-Cab Limited; Re R.W.D.S.U., AFL:CIO:CLC;; Re 751341 Ontario Ltd. operating as M & M Holdings, and M & M Auto Centre South End Cab Inc. ....	1275
13.	Vaughan Public Libraries; Re C.U.P.E. ....	1282

## COURT PROCEEDINGS

1.	Cadillac Fairview Corporation Limited and T.E.C. Leasholds Limited; Re R.W.D.S.U., AFL-CIO-CLC, T. Eaton Company Limited and Ontario Labour Relations Board.....	1292
----	--	------



SUBJECT INDEX

Accreditation - Board able to define unit of employers and satisfy double majority test whether or not two of employers included - Accreditation should not be delayed while Board resolves issues which do not affect final disposition - Accreditation orders issuing

METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION; RE I.U.O.E., LOCAL 793; RE ONTARIO CONCRETE AND DRAIN CONTRACTORS ASSOCIATION; RE L.I.U.N.A., LOCAL 183; RE TEAMSTERS' UNION, LOCAL UNION 230; RE METROPOLITAN TORONTO ROAD BUILDERS ASSOCIATION; RE CANADIAN AUTOMATIC SPRINKLER ASSOCIATION; RE U.A., LOCAL 46; RE ONTARIO PIPE TRADES COUNCIL OF U.A.; RE U.A., LOCAL 853; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; RE TORONTO CONSTRUCTION ASSOCIATION, GENERAL CONTRACTORS SECTION; RE SARNIA CONSTRUCTION ASSOCIATION; RE CONSTRUCTION ASSOCIATION OF THUNDER BAY; RE SUDBURY CONSTRUCTION ASSOCIATION; RE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION; RE ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION; RE THE RESIDENTIAL LOW-RISE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY; RE THE HEAVY CONSTRUCTION ASSOCIATION OF TORONTO; RE TORONTO HOUSING LABOUR BUREAU ..... 1226

Bargaining Unit - Certification - Construction Industry - Union seeking to carve out craft unit of concrete form workers from broader existing unit - Board reviewing jurisprudence on displacement applications in construction industry - Board following general practice of allowing craft to carve out in construction industry and having description of non-ICI portion of bargaining unit mirror ICI portion

SHEARWALL FORMING (EAST) LTD.; RE C.J.A., LOCAL 27; RE THE FORM WORK COUNCIL OF ONTARIO; RE AUTOMATIC STRUCTURES LTD. .... 1254

Bargaining Unit - Certification - Employer requesting twenty hour cut-off for full-time unit to reflect workplace distinction between permanent and casual employees - Union requesting twenty-four hour cut-off and citing reliance during organizing on Board's twenty-four hour "rule" - Board not fettering discretion in taking into account labour relations community's interest in consistency and predictability - Board considering reliance interests, right of self-organization, potential for gerrymandering, lack of agreement between parties - Terms of employment often unilaterally imposed by employer and may not be reliable indicators of community of interest - Effect of employer's request disenfranchisement of casual employees - Standard division not causing serious labour relations problems - Facts not sufficiently exceptional to warrant departure from normal practice

VAUGHAN PUBLIC LIBRARIES; RE C.U.P.E. .... 1282

Bargaining Unit - Certification - Union seeking to represent group of drivers owning neither car nor plate - Employer arguing unit of all dependent contractors more appropriate - Board affirming more than one unit may be appropriate - Unit proposed by union having distinct community of interest - "Pure driver" units recognized elsewhere and not causing serious bargaining problems or prejudice to public interest - Board accepting unit proposed by union

U-NEED-A-CAB LIMITED; RE R.W.D.S.U., AFL:CIO:CLC.; RE 751341 ONTARIO LTD. OPERATING AS M & M HOLDINGS, AND M & M AUTO CENTRE SOUTH END CAB INC. .... 1275



II

Certification - Bargaining Unit - Construction Industry - Union seeking to carve out craft unit of concrete form workers from broader existing unit - Board reviewing jurisprudence on displacement applications in construction industry - Board following general practice of allowing craft to carve out in construction industry and having description of non-ICI portion of bargaining unit mirror ICI portion	
SHEARWALL FORMING (EAST) LTD.; RE C.J.A., LOCAL 27; RE THE FORM WORK COUNCIL OF ONTARIO; RE AUTOMATIC STRUCTURES LTD. ....	1254
Certification - Bargaining Unit - Employer requesting twenty hour cut-off for full-time unit to reflect workplace distinction between permanent and casual employees - Union requesting twenty-four hour cut-off and citing reliance during organizing on Board's twenty-four hour "rule" - Board not fettering discretion in taking into account labour relations community's interest in consistency and predictability - Board considering reliance interests, right of self-organization, potential for gerrymandering, lack of agreement between parties - Terms of employment often unilaterally imposed by employer and may not be reliable indicators of community of interest - Effect of employer's request disenfranchisement of casual employees - Standard division not causing serious labour relations problems - Facts not sufficiently exceptional to warrant departure from normal practice	
VAUGHAN PUBLIC LIBRARIES; RE C.U.P.E. ....	1282
Certification - Bargaining Unit - Union seeking to represent group of drivers owning neither car nor plate - Employer arguing unit of all dependent contractors more appropriate - Board affirming more than one unit may be appropriate - Unit proposed by union having distinct community of interest - "Pure driver" units recognized elsewhere and not causing serious bargaining problems or prejudice to public interest - Board accepting unit proposed by union	
U-NEED-A-CAB LIMITED; RE R.W.D.S.U., AFL:CIO:CLC; RE 751341 ONTARIO LTD. OPERATING AS M & M HOLDINGS, AND M & M AUTO CENTRE SOUTH END CAB INC. ....	1275
Certification - Construction industry - Board construing statement in respondent's reply about its parking business to be claim respondent not engaged in construction industry - Board jurisdiction to certify under construction provisions dependent on employer operating business in construction industry - Board directing hearing into whether employer operating business in construction industry	
MACDERO CONSTRUCTION LIMITED; RE L.I.U.N.A., LOCAL 183. ....	1224
Charter of Rights - Judicial Review - Interference in Trade Unions - Mall owner appealing Divisional Court decision (reported at (1988), 62 O.R. 2d 337) upholding Board decision (reported as <i>T. Eaton Company Limited</i> , [1985] OLRB Rep. June 941) - Board found mall owner to have committed unfair labour practice by acting on behalf of employer to enforce no solicitation policy without reasonable business justification - Mall owner arguing Board exceeded jurisdiction by infringing on property rights and by finding mall owner acted on behalf of employer - Board acting within statutory authority and not exercising powers in patently unreasonable manner - Appeal dismissed	
CADILLAC FAIRVIEW CORPORATION LIMITED AND T.E.C. LEASHOLDS LIMITED; RE R.W.D.S.U., AFL-CIO-CLC, T. EATON COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD ....	1292
Construction Industry - Bargaining Unit - Certification - Union seeking to carve out craft unit of concrete form workers from broader existing unit - Board reviewing jurisprudence on displacement applications in construction industry - Board following general practice of allow-	

ing craft to carve out in construction industry and having description of non-ICI portion of bargaining unit mirror ICI portion	
SHEARWALL FORMING (EAST) LTD.; RE C.J.A., LOCAL 27; RE THE FORM WORK COUNCIL OF ONTARIO; RE AUTOMATIC STRUCTURES LTD. ....	1254
Construction Industry - Certification - Board construing statement in respondent's reply about its parking business to be claim respondent not engaged in construction industry - Board jurisdiction to certify under construction provisions dependent on employer operating business in construction industry - Board directing hearing into whether employer operating business in construction industry	
MACDERO CONSTRUCTION LIMITED; RE L.I.U.N.A., LOCAL 183.....	1224
Duty of Fair Representation - Unfair Labour Practice - Complainant winning promotion competition - Union supporting grievance of unsuccessful candidate - Complainant alleging union breached duty by failing to represent her at arbitration - Board reviewing content of duty - Where union properly supports interest of one bargaining unit member consistent with proper application and administration of collective agreement, union not also required to represent opposing interest - Union not guarantor of every aggrieved employee - Complaint dismissed	
MLAKAR, MARIA; RE C.U.P.E., LOCAL 79; RE THE MUNICIPALITY OF METROPOLITAN TORONTO .....	1246
Employee reference - Practice and Procedure - Board outlining information to be filed in employee reference and Board procedure	
HOTEL DIEU OF ST. JOSEPH'S HOSPITAL OF WINDSOR; RE O.N.A.....	1221
Employee reference - Union requesting determination of bargaining unit status of head secretaries - Certificate issued on basis of agreement excluding head secretaries - Agreement reserving right of union to raise "consideration of their inclusion in the bargaining unit" - Board interpreting agreement to mean parties contemplated extension of bargaining rights by voluntary recognition at bargaining table - Board determination confined to employee status, not bargaining unit status - Board need not entertain application to determine employee status of individuals clearly excluded from bargaining rights where application meant to assist in voluntary recognition	
BOARD OF EDUCATION FOR THE CITY OF ETOBICOKE; RE C.U.P.E.....	1203
Evidence - Health and Safety - Witness - Complainant calling Ministry Health and Safety Inspector as witness - Director authorizing Inspector to testify - <i>Occupational Health and Safety Act</i> providing Inspector not compellable witness - Non-compellability waived - Inspector competent witness	
BOEING CANADA/DEHAVILLAND DIVISION; RE JILL BETTES .....	1213
Health and Safety - Evidence - Witness - Complainant calling Ministry Health and Safety Inspector as witness - Director authorizing Inspector to testify - <i>Occupational Health and Safety Act</i> providing Inspector not compellable witness - Non-compellability waived - Inspector competent witness	
BOEING CANADA/DEHAVILLAND DIVISION; RE JILL BETTES .....	1213
Interference in Trade Unions - Judicial Review - Charter of Rights - Mall owner appealing Divisional Court decision (reported at (1988), 62 O.R. 2d 337) upholding Board decision (reported as <i>T. Eaton Company Limited</i> , [1985] OLRB Rep. June 941) - Board found mall owner to have committed unfair labour practice by acting on behalf of employer to enforce no solicitation policy without reasonable business justification - Mall owner arguing Board exceeded jurisdiction by infringing on property rights and by finding mall owner acted on	

#### IV

behalf of employer - Board acting within statutory authority and not exercising powers in patently unreasonable manner - Appeal dismissed	
CADILLAC FAIRVIEW CORPORATION LIMITED AND T.E.C. LEASHOLDS LIMITED; RE R.W.D.S.U., AFL-CIO-CLC, T. EATON COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD .....	1292
Intimidation and Coercion - Reconsideration - Remedies - Unfair Labour Practice - Complainant requesting reconsideration on ground Board failed to make decision on merits - Board not required to decide on merits where lack of appropriate remedy makes issue moot - Board having discretion to inquire into section 89 complaint - Application dismissed	
CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....	1218
Judicial Review - Charter of Rights - Interference in Trade Unions - Mall owner appealing Divisional Court decision (reported at (1988), 62 O.R. 2d 337) upholding Board decision (reported as <i>T. Eaton Company Limited</i> , [1985] OLRB Rep. June 941) - Board found mall owner to have committed unfair labour practice by acting on behalf of employer to enforce no solicitation policy without reasonable business justification - Mall owner arguing Board exceeded jurisdiction by infringing on property rights and by finding mall owner acted on behalf of employer - Board acting within statutory authority and not exercising powers in patently unreasonable manner - Appeal dismissed	
CADILLAC FAIRVIEW CORPORATION LIMITED AND T.E.C. LEASHOLDS LIMITED; RE R.W.D.S.U., AFL-CIO-CLC, T. EATON COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD .....	1292
Parties - Practice and Procedure - Board remaining seized to resolve disputes over Board order - Lawyer for complainant requesting hearing to deal with complainant's unpaid legal bill - Board decision requiring union to retain counsel not effecting retainer of counsel - Lawyer not having standing to seek clarification or enforcement of Board order when acting personally and not for party to proceeding - Application dismissed	
ST. PIERRE, JEANNE; RE U.A.W., LOCAL 444 AND CHRYSLER CANADA LTD. .	1251
Practice and Procedure - Parties - Board remaining seized to resolve disputes over Board order - Lawyer for complainant requesting hearing to deal with complainant's unpaid legal bill - Board decision requiring union to retain counsel not effecting retainer of counsel - Lawyer not having standing to seek clarification or enforcement of Board order when acting personally and not for party to proceeding - Application dismissed	
ST. PIERRE, JEANNE; RE U.A.W., LOCAL 444 AND CHRYSLER CANADA LTD. .	1251
Practice and Procedure - Employee reference - Board outlining information to be filed in employee reference and Board procedure	
HOTEL DIEU OF ST. JOSEPH'S HOSPITAL OF WINDSOR; RE O.N.A.....	1221
Practice and Procedure - Witness - Board reviewing authority for enforcing attendance of witnesses - Board issuing arrest warrant for previously subpoenaed material witness who failed to attend	
KING GLASS LIMITED/KING GLASS; RE P.A.T., LOCAL 1795 - GLAZIERS .....	1223
Practice and Procedure - Witness - Board requiring correct name and address for arrest warrant - Party calling witness responsible for providing Board with correct name and address for arrest warrant	
REAL CARPENTERS; RE C.J.A., LOCAL 27 .....	1250
Reconsideration - Intimidation and Coercion - Remedies - Complainant requesting reconsideration on ground Board failed to make decision on merits - Board not required to decide on	



merits where lack of appropriate remedy makes issue moot - Board having discretion to inquire into section 89 complaint - Application dismissed	
CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....	1218
Remedies - Intimidation and Coercion - Reconsideration - Complainant requesting reconsideration on ground Board failed to make decision on merits - Board not required to decide on merits where lack of appropriate remedy makes issue moot - Board having discretion to inquire into section 89 complaint - Application dismissed	
CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....	1218
Unfair Labour Practice - Duty of Fair Representation - Complainant winning promotion competition - Union supporting grievance of unsuccessful candidate - Complainant alleging union breached duty by failing to represent her at arbitration - Board reviewing content of duty - Where union properly supports interest of one bargaining unit member consistent with proper application and administration of collective agreement, union not also required to represent opposing interest - Union not guarantor of every aggrieved employee - Complaint dismissed	
MLAKAR, MARIA; RE C.U.P.E., LOCAL 79; RE THE MUNICIPALITY OF METROPOLITAN TORONTO .....	1246
Unfair Labour Practice - Intimidation and Coercion - Reconsideration - Remedies - Complainant requesting reconsideration on ground Board failed to make decision on merits - Board not required to decide on merits where lack of appropriate remedy makes issue moot - Board having discretion to inquire into section 89 complaint - Application dismissed	
CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....	1218
Witness - Evidence - Health and Safety - Complainant calling Ministry Health and Safety Inspector as witness - Director authorizing Inspector to testify - <i>Occupational Health and Safety Act</i> providing Inspector not compellable witness - Non-compellability waived - Inspector competent witness	
BOEING CANADA/DEHAVILLAND DIVISION; RE JILL BETTES .....	1213
Witness - Practice and Procedure - Board reviewing authority for enforcing attendance of witnesses - Board issuing arrest warrant for previously subpoenaed material witness who failed to attend	
KING GLASS LIMITED/KING GLASS; RE P.A.T., LOCAL 1795 - GLAZIERS .....	1223
Witness - Practice and Procedure - Board requiring correct name and address for arrest warrant - Party calling witness responsible for providing Board with correct name and address for arrest warrant	
REAL CARPENTERS; RE C.J.A., LOCAL 27 .....	1250



**1926-88-M Canadian Union of Public Employees, Applicant v. Board of Education for the City of Etobicoke, Respondent**

Employee reference - Union requesting determination of bargaining unit status of head secretaries - Certificate issued on basis of agreement excluding head secretaries - Agreement reserving right of union to raise "consideration of their inclusion in the bargaining unit" - Board interpreting agreement to mean parties contemplated extension of bargaining rights by voluntary recognition at bargaining table - Board determination confined to employee status, not bargaining unit status - Board need not entertain application to determine employee status of individuals clearly excluded from bargaining rights where application meant to assist in voluntary recognition

**BEFORE:** *Owen V. Gray*, Vice-Chair, and Board Members *W. A. Correll* and *R. R. Montague*.

**APPEARANCES:** *Helen O'Regan* for the applicant; *John Saunders* and *Chris Koester* for the respondent.

**DECISION OF THE BOARD;** December 21, 1989

1. On November 4, 1988, a representative of the applicant trade union sent the following request to the Registrar:

RE: Board of Education for the City of Etobicoke  
  
and  
  
Canadian Union of Public Employees

During the course of negotiations the parties were unable to resolve the matter of whether or not the classification of Secretary V is appropriate for inclusion in the bargaining unit.

We therefore request that this matter be resolved by requesting the OLRB assign a field officer to make the appropriate inquiries into the duties and responsibilities of the said Secretaries and subsequently the OLRB make a determination as to their inclusion or exclusion from the said bargaining unit.

Upon being informed of the trade union's request, the respondent's manager of labour/employee relations advised the Registrar as follows:

Further to your letter of December 1, 1988, please be advised that the Board of Education for the City of Etobicoke challenges the assertion of the Canadian Union of Public Employees that the position of Head Secretary - Secondary School (Secretary Grade V) is an employee for the purposes of the Labour Relations Act. The Board of Education asserts that this position is excluded from the bargaining unit under Section 1(3)(b) in that it exercises managerial functions.

In the opinion of the Board of Education this position should remain excluded from the bargaining unit since it performs the following responsibilities:

- . provides supervision of the school's office staff in the day-to-day administrative routines and operation of the entire school;
- . assists in the interviewing, selection and appraisal of office staff;
- . provides guidance, discipline and training of staff, as required;



in consultation with the principal, allocates, assigns and checks work performed by the office staff.

For your reference I am enclosing a copy of the Position Description for Head Secretary-Secondary School (Secretary Grade V) which is used primarily for recruitment purposes. I am also enclosing a copy of the Labour Boards's [sic] decision, dated April 12, 1988, with respect to the certification of the bargaining unit. Item 5 was adhered to with respect to the negotiations of a first Collective Agreement. However, having considered the Union's request to include this position in the bargaining unit, the Board of Education was of the opinion that it was properly excluded for the above noted reasons.

2. In late February 1989, a Labour Relations Officer met with representatives of the applicant and respondent, who agreed that the evidence of three named persons would be representative of all persons in the classification Secretary Grade V/Head Secretary. Examinations of those three persons were conducted on May 1 and May 8, 1989 by the Labour Relations Officer, a representative of the applicant and counsel retained by the respondent. A transcript of those examinations was prepared and forwarded to the parties. The applicant's representative and the respondent's counsel made written representations as to the conclusions the Board ought to reach on the basis of the transcribed evidence as to the question whether persons employed in the position of Secretary Grade V/Head Secretary are deemed not to be employees by operation of the provisions of clause 1(3)(b) of the *Labour Relations Act* ("the Act"). In his written submissions, the respondent's counsel requested an oral hearing on this question.

3. When the application finally came on for hearing before this panel, the respondent's counsel asserted for the first time that the question whether those employed by the respondent as Head Secretaries exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations was not one which the Board should answer under subsection 106(2) of the Act, for reasons to which we shall refer shortly. In the circumstances, we heard the parties' argument with respect to both the question the respondent's counsel first raised at the opening of the hearing and the question which the parties and the Board had come prepared to deal with at that hearing, and reserved our decision on both questions.

#### **Should the "employee status" of Head Secretaries be determined in this application?**

4. Counsel for the respondent drew our attention to the certification decision referred to in his client's letter to the Board of December 8, 1988. The decision recites that the parties met with a Labour Relations Officer on the day scheduled for the hearing of the matter, reached agreement on all matters in dispute between them and further agreed to waive their right to a formal hearing in the matter. It is apparent from the form of the decision that there was no formal hearing and that, therefore, the decision would have been made on the basis of the Labour Relations Officer's report and the membership evidence filed by the applicant. Paragraphs 3, 4 and 5 of the decision read as follows:

3. Having regard to the agreement of the parties, the Board further finds that all office and clerical employees of the respondent in Etobicoke in its secondary schools, save and except supervisor, persons above the rank of supervisor and persons for whom any trade union held bargaining rights as of March 2nd, 1988, constitute a unit of employees of the respondent appropriate for collective bargaining.
4. For the purpose of clarity the Board notes that the term "supervisor" as it appears in the bargaining unit description includes Secretary Grade 5/Head Secretary.
5. As part of the settlement of the issues in this application the parties agreed that notwithstanding the agreement on the bargaining unit and the clarity note the respondent agrees the applicant may raise the matter of the individual duties of Secretary Grade

5/Head Secretary at the forthcoming collective bargaining for consideration of their inclusion in the bargaining unit.

On the basis of the membership evidence filed, the Board (differently constituted) certified the applicant without a vote. It is common ground that the parties have since entered into a collective agreement in which the respondent recognizes the applicant as bargaining agent for a bargaining unit described in the language used in paragraph 3 of the Board's certification decision. It is also common ground that that collective agreement does not contain any express agreement with respect to the question whether the term "supervisor" as it appears in the recognition clause of that agreement includes or excludes Secretary Grade V/Head Secretary.

5. Having regard to paragraph 4 of the certification decision, counsel for the respondent argues that the position in question in this application was expressly excluded from the bargaining unit for which the applicant was certified. He submits that the Board does not and should not entertain applications under section 106(2) to determine the employee status of persons and positions expressly excluded from the scope of the collective bargaining relationship between the parties to the application. He relies on three decisions of the Board in that respect: *City of St. Catharines*, [1966] OLRB Rep. July 270; *Township of Scarborough*, [1966] OLRB Rep. Sept. 433; and, *Dunlop Canada Limited*, [1967] OLRB Rep. Apr. 95. His only explanation for the respondent's delay in raising this point is that counsel was not retained until after the Labour Relations Officer began his inquiry. We note that counsel was in attendance at the examination of employees in this matter roughly five months before the hearing at which this point was raised for the first time. That period of delay is unexplained, as is counsel's failure to raise this point in the statement of desire to make representations which he filed six weeks before the hearing date.

6. The applicant's representative took the position that the question whether Head Secretaries exercised managerial functions or were employed in a confidential capacity was unresolved at the time of the certification, and the parties had then agreed to discuss this during collective bargaining. During collective bargaining, she said, the parties had agreed to have the inclusion or exclusion of Head Secretaries determined by means of an application to this Board under subsection 106(2). As there had been no advance notice that this point would be raised, the applicant's representative did not have witnesses present who could testify as to the parties' discussions on this point.

7. Trade union and employer parties to certification applications not infrequently disagree about whether certain individuals or positions are excluded from the bargaining unit which is the subject of the application by operation of clause 1(3)(b) of the Act. If the dispute affects the description of the bargaining unit or the outcome of the application, it is generally resolved in the application. When the dispute affects neither the description of the bargaining unit nor the applicant's entitlement to a vote or to certification without a vote, the Board can and does dispose of the application without resolving the dispute, leaving it to be dealt with by a subsequent application under subsection 106(2) if the parties are unable to resolve it themselves: *Robin Hood Multi-Foods Inc.*, [1985] OLRB Rep. July 1159. The Board does not do that, however, unless it is satisfied that the applicant trade union has the requisite membership support in the bargaining unit on each and every possible outcome of the dispute. In other words, such an outcome takes into account the wishes of the persons whose inclusion in the bargaining unit is at issue.

8. The Board's decision of April 12, 1988 does not treat the matter of inclusion or exclusion of Head Secretaries as a matter in dispute which did not need to be resolved. On the contrary, the language of the decision quite clearly shows the Board acting on an agreement by the parties that the position of Head Secretary would be excluded from the bargaining unit for which the applicant was to be certified. The rather unusual language of paragraph 5 of the decision suggests

that the parties disagreed about the reason for the agreed exclusion, since there would be no question of a subsequent extension of bargaining rights to the disputed position if both parties agreed that it was excluded from any bargaining unit by operation of clause 1(3)(b) of the Act. Having regard to the language used in the decision, the panel which made it would have assessed whether it could certify the applicant for the bargaining unit on which the parties had agreed without regard to the wishes of those then employed in the position of Head Secretary. In the circumstances, the best sense which can be made of the agreement referred to in paragraph 5 of the decision is that the parties contemplated the possibility of extension of the applicant's bargaining rights *by voluntary recognition* at the bargaining table if the parties could agree that the individual duties of those employed in that position did not bring them within ambit of clause 1(3)(b) of the Act.

9. The possibility that we would so interpret the language of the Board's decision of April 12, 1988 was brought to the attention of the applicant's representative during argument on this point. We observed that the Board would not look behind the language of the decision in the absence of an application for reconsideration and noted that such an application would ordinarily be dealt with by the panel which made the original decision. We asked the applicant's representative whether she proposed to make such an application. After retiring to consider the matter, she advised us that the applicant did not propose to make such an application. She reiterated her understanding that, during the negotiation of their first collective agreement, the parties had agreed that the inclusion in or exclusion from the bargaining unit of Head Secretaries would turn on the outcome of an application under 106(2) with respect to that position.

10. The applicant's representative was unable to answer our further questions with respect to the precise nature of the agreement she alleged had been made at the bargaining table. She undertook to file a written statement on that subject at a later date. As it appeared possible that the applicant would allege an agreement at the bargaining table that it would have bargaining rights for Head Secretaries if the Board found them to be employees within the meaning of the Act, we invited and received the submissions of counsel for the respondent on the proposition that the existence of such an allegation, even if disputed, was a sufficient reason for the Board to answer the question posed under subsection 106(2) in the circumstances of this case.

11. Following our hearing, the applicant filed a written statement by Jack Kirkby that

... on or about July 12th 1988, while in contract negotiations with the Board of Education for the City of Etobicoke and Local 2897 of the Canadian Union of Public Employees, I reached an agreement with Mr. Christopher Koester, Personnel Officer for the Board of Education, that the issue of whether or not the Grade 5 Secondary School Secretaires [sic] employed by the Board of Education would become members of the bargaining unit, would be decided by the Ontario Labour Relations Board through a determination under Section 106(2) of the Ontario Labour Relations Act.

12. Subsection 106(2) of the Act provides that

(2) If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes.

As it has repeatedly observed, the question the Board addresses under this subsection is whether an individual is an employee for the purposes of the Act, not whether he or she falls within the scope of a trade union's bargaining rights: see *Northern Telecom*, [1983] OLRB Rep. July 1134. The three decisions on which the respondent relies stand for the proposition that the Board need not entertain a trade union's application to determine the employee status of an individual whose position is clearly excluded from the scope of the applicant's bargaining rights, where the applica-



tion is brought in order to pave the way for a request for voluntary recognition. In those cases there was no allegation that the employer had agreed that the disputed individuals would fall within the scope of the applicant union's bargaining rights if they were found to be employees for the purposes of the Act. It does not appear to us inconsistent with the principles elaborated in those decisions for the Board to entertain an application under subsection 106(2) with respect to a job classification about which such an agreement has been made. Of course, we are not at this point in a position to say that there is such an agreement. All that can be said is that the applicant alleges the existence of such an agreement.

13. If the respondent had raised this objection at the outset, the Board might have chosen to resolve any dispute about what was agreed at the bargaining table before entering into any enquiry about the question raised by the applicant. As it is, all concerned had expended considerable time and energy on the question raised by the applicant before the respondent raised this last minute objection. Indeed, the late raising of the objection had made it prudent for the Board to actually hear the parties' argument on the merits of the question before deciding whether to give effect to the objection. With all that effort already expended on a determination on the merits, we think it makes more sense to give the parties that determination, for what it is worth, than to first inquire into matters which might have been, but could not now be, inquired into before that effort was expended.

14. We therefore propose to express our opinion on the question whether those employed in the disputed position were employees within the meaning of the *Labour Relations Act* as of the time or times relevant to this applicant.

**Are those employed as "Secretary Grade V/Head Secretary" deemed not to be employees by operation of clause 1(3)(b) of the Act?**

15. Counsel for the respondent took the position that our determination whether persons employed as Head Secretary are employees for the purpose of the Act should be made as of the date of preparation of the transcripts of the witnesses' evidence or, in the alternative, as of May 1, 1989, the first day evidence was taken. The applicant's representative said that the determination should be made as of March 2, 1988, the date on which it made its application for certification. The applicant's representative said there was an understanding that the examination would be conducted as at that date. Counsel for the respondent agreed that questioning focused on March 2, 1988. Remarks counsel is recorded as having made near the beginning of the examination of Peggy Gooch appear to indicate agreement that the examination of that witness, at least, be limited to events occurring prior to March 2, 1988. It is not apparent to us why that date would have had any significance other than for the determination of the count in the certification application, a count from which Head Secretaries were excluded by agreement. That date was approximately fourteen months prior to the commencement of the examinations. During those examinations some of the witnesses were asked questions about whether certain things had occurred during the preceeding year. The agreement referred to in Mr. Kirby's statement must have been made after certification was granted and before the first collective agreement was concluded. The latter event occurred in April 1989, we are told. No one suggests that the duties and responsibilities of the position of Head Secretary changed in any material respect between March 2, 1988 and May 1, 1989. The respondent was certainly prepared to have the evidence in the transcripts determine the question at hand as of May 1, 1989. In those circumstances, it is perhaps sufficient to note that our determination is made on the basis of that evidence.

16. There appears to be no challenge to the proposition in the respondent's letter of

December 8, 1988 that the position description used by the respondent for the position of the Head Secretary/Secondary School (Secretary Grade V) includes the following:

THE BOARD OF EDUCATION FOR THE CITY OF ETOBICOKE

HEAD SECRETARY - SECONDARY SCHOOL

GRADE V

POSITION DESCRIPTION

BASIC OBJECTIVE

Working under the direction of the school principal who is responsible for the administration and management of the school:

- provides supervision of the school's office staff in the day-to-day administrative routines and operation of the entire school;
- provides secretarial and administrative support to the principal;
- maintains good working relationships and communications with teachers, business and support staff, the student body and the community under the direction of the principal.

MAJOR RESPONSIBILITIES

- through consultation with the principal, determines the assignment of responsibilities and duties for the office staff throughout the entire school;
- responsible for ensuring the preparation of a variety of correspondence, reports, newsletters, memos, et al, as required;
- develops, implements and maintains a variety of office records and files in keeping with current and developing technologies;
- ensures the timely completion of records and statistical reports;
- co-ordinates or oversees special school programs such as commencement exercises, parents' night;

SUPERVISION

- assists in the interviewing, selection and appraisal of office staff;
- provides guidance, discipline and training of staff, as required;
- ensures that positive working relationships are fostered and maintained;
- in consultation with the principal, allocates, assigns and checks work performed by the office staff.

In addition to the responsibilities outlined above, the incumbent of this position may be called upon to assume other duties as assigned and as approved by the principal.

17. As we have already noted, the parties agreed that evidence given by Helen Wallbank, Doreen Batterbury and Peggy Gooch would be representative of the duties and responsibilities of all those employed in the position of Head Secretary. As almost invariably occurs in cases of this sort, the duties and responsibilities actually performed vary among the three individuals examined. When the parties to an issue of this sort agree that the status of all those employed in a particular

position will be determined on the evidence of a few of those employed in that position, we are obliged to form a composite view of the position: *Royal Ontario Museum*, [1985] OLRB Rep. Feb. 325 at paragraph 16.

18. Leaving aside for a moment the reference to providing “discipline... of staff”, the evidence confirms that Head Secretaries generally perform the functions set out in the position description. In addition to providing secretarial and administrative support to the school principal, Head Secretaries do allocate and co-ordinate the performance of secretarial work for Vice-Principals, teachers and students by others employed at that school as Secretaries. There were eight other such secretaries at the school where Ms. Wallbank was employed as Head Secretary, two other secretaries at the school where Doreen Batterbury served as Head Secretary and three others at the school where Peggy Gooch served as Head Secretary prior to September 1988. The Head Secretary checks the work of the other secretaries. She is expected to and does admonish them if the work is unsatisfactory and may require that unsatisfactory work be redone. As for the Head Secretary’s having the power to “discipline” other secretaries in the sense in which that word is used in the labour relations context, the following passage from the examination of Helen Wallbank is instructive:

Do you feel you have the authority to discipline at all?

Yes, I do.

To what extent?

Well, just to...only just talk to them...not to say “If you don’t do this, this is what’s going to happen.” I don’t have that, no.

If you don’t have that, who has that authority?

Well, I think the Principal could make a recommendation to the Board to do it.

While one of the examinees thought she had the power to issue a written warning, she had never done so. It seems to us that Head Secretaries do not have any significant power to “discipline” other secretaries in the sense in which that word is ordinarily used in a labour relations context.

19. Although the evidence is not as detailed as one might have liked, it appears that employment relations between the School Board and school secretaries is controlled centrally from the School Board’s administrative offices. In particular, the actual decision to hire, fire, or formally discipline a secretary is made by someone in the School Board’s administrative offices on the basis of information received from the school principal, the Head Secretary and, perhaps, others as well. Candidates for employment to fill a vacant secretarial position in the school are sent by the School Board to be interviewed by the principal, who is joined in these interviews by the Head Secretary and, perhaps, a Vice-Principal. It appears that the interviewers attempt to form a judgement on a consensus basis, which judgement is then communicated to the School Board. We can fairly infer that a negative judgement by the principal and Head Secretary of a school would result in the candidate’s not being employed as a secretary at that school; it is not clear what effect the interview has on the candidate’s prospects for employment at the Board generally. Similarly, while there appears to have been at least one occasion on which a secretary with whose work a Head Secretary was dissatisfied left that Head Secretary’s school, it is not apparent that it resulted in her losing her employment with the Board.

20. Head Secretaries keep track of and report to the Board on the absences of other secretaries from work. They also deal with other secretaries’ needs for time off. It appears that there are



rules or guidelines set out by the School Board with respect to the circumstances in which time may be taken off. The respondent argues that the Head Secretary “grants” time off. It is clear that she exercises some co-ordinating function in attempting to minimize the impact of a secretaries’ taking time off work. It is not clear that the Head Secretary has any more than a limited discretion as to whether other secretaries take time off or not.

21. Ms. Wallbank testified that she made written valuations of the other secretaries at her school, using a form found by the business teacher at that school. This was at the suggestion or the request of the principal for whom she worked; the written evaluations went to him. The other two examinees were not involved in preparing or maintaining written evaluations with respect to other secretaries at their schools.

22. Many scores of the Board’s decisions review the meaning and application of the words “exercises managerial functions” in clause 1(3)(b) of the Act. In formulating its opinion as to whether those words apply to any particular individual, the Board applies a number of qualitative and quantitative criteria, as may be seen from the decisions cited or referred to in the brief of authorities filed by counsel for the respondent. In *The Lakehead Board of Education*, [1970] OLRB Rep. Feb. 1331, the Board made these observations:

Making a determination as to whether a person is employed in a managerial capacity is a more difficult assessment to make. The Board in a number of recent decisions has recognized the growing complexity of management structures, the diffusion of the lines of authority and the divergent elements that go into the decision making process. The Board, accordingly, in making such determination endeavours to distinguish between persons who truly exercise independent discretion or assert real authority, as opposed to those who merely implement decisions within a framework decided by others or whose independent discretion is limited to predetermined circumscribed areas. The Board is cognizant of the fact also that management today generally needs the assistance and advice of responsible and highly qualified individuals in the fields of their particular knowledge. The fact that such assistance or advice is sought and is accepted or taken into account by management does not mean that such persons exercise managerial functions in their own right. In all cases, the Board must evaluate the totality of each person’s job functions in deciding whether the person concerned, in an intrinsic sense, exercises managerial authority (see *The Hydro-Electric Power Commission of Ontario Case*, 1969 Aug. OLRB M.R. p. 669, and *Ajax and Pickering General Hospital Case*, dated February 19, 1970, Board File No. 15917-68-R).

23. In *Hydro Electric Commission of The Borough of Etobicoke*, [1981] OLRB Rep. Jan. 38, the Board noted that

25. Exercising supervisory functions does not by itself exclude a person from engaging in collective bargaining. Even when a person is primarily engaged in the supervision of others he is not managerial unless he also has effective control over their employment relationship. (See *Falconbridge Nickle Mines Limited*, [1976] OLRB Rep. Sept. 379 and *McIntyre Porcupine Mines*, *supra*.) Scheduling work for employees and co-ordinating their efforts (something regularly done by the foremen in this case) is not itself a managerial function. (See, in addition to the cases previously cited, *Second Manufacturing*, [1975] OLRB Rep. Sept. 658; *Thames Steel Construction Limited*, [1979] OLRB Rep. May 440 and *Caledon Hydro-Electric Commission*, [1979] OLRB Rep. Oct. 924.)

26. To determine whether the foremen in this case exercise managerial functions within the meaning of section 1(3)(b) of the Act, the Board will look to whether or not they exercise effective control and authority over the people they supervise as may be seen by an ability, at a minimum, to make effective recommendations in areas that materially affect the economic lives of the employees. If they act merely as conduits for management and do not themselves effectively control the economic lives of their employees, they would not be exercising functions with true managerial significance. As well, foremen would not be exercising managerial functions if they merely gather facts relating to their men from which management is then able to make its own

decisions as to how to deal with particular situations. Even if foremen's evaluations of employees are given serious consideration and are relied on by their supervisors in making their decisions affecting employees, the foremen would not be making effective recommendations unless the recommendations are so consistently and frequently followed that it could be said that through the recommendations the foremen are effectively controlling or determining the decisions. A recommendation would not be effective, for example, if it was merely one of several factors considered or relied on by a supervisor in the course of making his own independent decision. Similarly, foremen would not be viewed by the Board as exercising managerial functions if they merely act within strict supervisory guidelines set by others.

24. In *Windsor Utilities Commission*, [1971] OLRB Rep. May 296, the Board said, in part:

7. Where a person is required to exercise functions which are of a managerial nature and is also required to perform the type of work which is performed by the bargaining unit employees, the Board must determine whether the work is merely incidental to his managerial functions or whether the functions which are of a managerial nature are merely incidental to his bargaining unit work. In order to make this determination, the Board must ascertain the nature of and the extent to which such functions are exercised. If the nature of the functions are such that they require a person to make independent decisions in meaningful matters which are of real consequence to the company's operations rather than merely the application of expertise in technical matters, or if the person exercises his unfettered discretion concerning matters of substance in the employment relationship of other persons, the nature of such functions places him on the management side of the employee-management line, no matter how much bargaining unit work the person otherwise performs. It is not uncommon in small businesses for the owner or a foreman to perform work alongside the employees and at the same time administer all phases of the management end of the business. This is less likely to happen in larger companies.

8. In larger companies, however, persons are often delegated limited managerial functions with no real independent authority or discretion. In such cases, it is necessary to determine the extent to which such functions are exercised. If a person is engaged in these functions, which are limited in their nature, for the majority of time, any other work performed may be properly described as merely incidental to the managerial functions exercised. If, however, a person is required to perform bargaining unit work for the majority of the time and is also required to exercise managerial type functions which are of a restricted nature, the functions which are of a managerial type may be said to be merely incidental to the bargaining unit work. If the managerial type functions are merely incidental to the bargaining unit work performed, the person must be found to be an employee for the purposes of the Act.

25. Counsel for the respondent referred to three certification decisions which excluded Head Secretaries from units of school board office and clerical employees. In one of those decisions, the exclusion was on agreement of the parties. In another, the decision simply said that "having regard to the Report of the Examiner dated February 15, 1971 the Board finds that head secretaries employed in the Junior High and Secondary Schools exercise managerial functions within the meaning of section 1(1)(3) of The Labour Relations Act and accordingly are not included in the bargaining unit." There is no indication what facts were revealed by the report of the Examiner in that case. In *Board of Education for the Borough of Scarborough*, [1980] OLRB Rep. Dec. 1713, the Board did say something about the evidence from which it concluded that while there was some doubt about whether they exercised managerial functions, that School Board's head secretaries did have a regular involvement and confidential matters relating to labour relations. That decision quoted from the *Lakehead Board of Education*, *supra*, a decision in which the Board found that the Head Secretaries in the secondary schools of that respondent school board did not exercise managerial functions and were not employed in a confidential capacity in matters of labour relations within the meaning of clause 1(3)(b) of the Act. These decisions illustrate the trite proposition that the application of clause 1(3)(b) in each case depends on the facts in that case.

26. In addition to performing the functions on which the respondent's argument focused,

the respondents' Head Secretaries also spend time doing secretarial, clerical and administrative work which is in no way "managerial" and is similar to work performed by secretaries in the bargaining unit represented by the applicant. There is no evidence before us from which we can determine whether the time spent by a Head Secretary on such "bargaining unit" work is greater or less than the time she spends on allegedly managerial tasks. We are not persuaded that Head Secretaries exercise such unfettered discretion concerning matters of substance in the school board's employment relationship with other persons as to make this quantitative consideration irrelevant. It is incumbent upon anyone seeking to exclude persons from the scope of the *Labour Relations Act* by application of clause 1(3)(b) to come forward with affirmative evidence that the clause bears application in the circumstances: *The Corporation of the City of Thunder Bay*, [1981] OLRB Rep. Aug. 1121 at paragraph 6. In the absence of evidence which establishes that fact, we cannot find that Head Secretaries spend a majority of their time performing "managerial type functions which are of a restricted nature." We would add that it is difficult to say whether we would have found in the employer's favour on this branch of clause 1(3)(b) even if the evidence had persuaded us that Head Secretaries spent a majority of their time performing certain of the functions on which the employer's argument concentrated.

27. Accordingly, we are not persuaded that Head Secretaries "exercise managerial functions" within the meaning of clause 1(3)(b) of the Act.

28. The employer also argued that those in the position of Head Secretary are "employed in a confidential capacity in matters relating the labour relations" within the meaning of clause 1(3)(b). An employee's exposure to "confidential" information is not enough to exclude her from the coverage of the Act. Before this branch of clause 1(3)(b) will be applied to an individual, the confidential information must relate to labour relations matters, and her involvement in handling such information must be a regular and material part of the normal course of her employment: see, for example, *Comtech Group Ltd.*, [1974] OLRB Rep. May 291.

29. Other secretaries confide in a Head Secretary with respect to personal problems and other matters which may affect their employment. The one Head Secretary who was asked by her Principal to do written evaluations of the other Secretaries at their school continued to have access to those evaluations. It appears from the evidence that as secretary to the school Principal, a Head Secretary becomes privy to some information about the collective bargaining between the School Board and its teachers and about School Board developments which will effect the careers of teachers of the School at which the Head Secretary is employed. In that connection it is important to note that the school principal to whom a Head Secretary reports is a member of the teacher bargaining unit which bargains collectively with the School Board under the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464, as amended.

30. The confidentiality branch of clause 1(3)(b) of the Act is concerned with excluding from a bargaining unit persons who have access to information in the possession of management which is relevant to its labour relations and which management wishes to keep confidential from bargaining unit employees and their bargaining agent. Information received by the Head Secretary from members of the secretarial bargaining unit or from members of the teacher bargaining unit would not fall within this category, nor would information about labour relations with teachers which is revealed by the School Board to the school principal, who is a member of the teacher bargaining unit. A Head Secretary's continued access to her own written observations and opinions about other secretaries would not bring her within the excluded classification either. It is not at all clear from the evidence what role (if any) a school's Principal plays on the management side in matters of labour relations between the School Board and employees outside the teacher bargaining unit. The provisions of the *Education Act* to which counsel referred (clauses (b) and (i) of section 236)



are not enough to support the conclusion that someone who provides secretarial and administrative assistance to a school Principal must of necessity be directly involved in matters relating to the School Board's labour relations with its employees to such a degree as to warrant her exclusion from the benefits of collective bargaining under the *Labour Relations Act*. We are not persuaded on the evidence before us that the respondent's Head Secretaries are "employed in a confidential capacity in matters relating to labour relations" within the meaning of clause 1(3)(b) of the Act.

31. We conclude that persons employed in the position Secretary Grade V/Head Secretary are employees within the meaning of the *Labour Relations Act*. The consequences which flow from that opinion will have to be resolved between the parties themselves or, failing that, in some other proceeding.

---

**1761-88-OH Jill Bettes, Complainant v. Boeing Canada/DeHavilland Division, Respondent**

**Evidence - Health and Safety - Witness - Complainant calling Ministry Health and Safety Inspector as witness - Director authorizing Inspector to testify - *Occupational Health and Safety Act* providing Inspector not compellable witness - Non-compellability waived - Inspector competent witness**

**BEFORE:** S. A. Tacon, Vice-Chair, and Board Members J. A. Ronson and D. A. Patterson.

**APPEARANCES:** Daniel A. Harris, Gus Goncalves and J. Bettes for the complainant; L. Bertuzzi, H. R. Dyer and P. Irwin for the respondent; Mark Alchuk for the Ministry of Labour and The Occupational Health and Safety Branch (at the November 7, 1989 hearing).

**DECISION OF THE BOARD;** December 11, 1989

1. This is a complaint alleging violation of section 24 of the *Occupational Health and Safety Act* (hereinafter referred to as the "OHSA"). During the proceedings, counsel for the complainant issued a summons to J. Harkins, an inspector with the Occupational Health and Safety Branch. Harkins and several other officials of the Ministry of Labour had been involved in the various investigations and meetings in connection with the work refusals which eventually led to the instant complaint. Harkins appeared at the hearing and indicated that the legal department of the Occupational Health and Safety Branch had said "it was alright" for him to testify.

2. Because this was a matter of first impression and because Harkins initially appeared unaccompanied by counsel for the Ministry, the Board directed the parties to make submissions addressing several of its concerns relating to the orderly conduct of its hearing in accordance with the principles of natural justice and also directed that the Ministry be given notice to afford them an opportunity to make representations. The various submissions of the parties are next set out briefly.

3. Counsel for the complainant reviewed the statutory language in section 34(2) of the OHSA and contrasted that wording with that used in other comparable statutes such as the *Labour Relations Act* and the *Employment Standards Act*. As the OHSA only provided for the non-compellability of inspectors, in contrast to the broader wording in the other statutes which spoke of

non-compellability and non-competence, counsel argued Harkins was a competent witness. Counsel stressed that exceptions to the first principle that the public has a right to all the relevant testimony should be kept to a minimum and, here, the statute did not preclude such evidence. Counsel carefully reviewed a number of decisions of the courts and the Board in support of his submissions that the paramount policy interest was the public's right to hear all relevant testimony and exceptions should be restricted as far as possible. In rely, counsel argued that the statement by Mr. Alchuk, as counsel for the Ministry of Labour and the Occupational Health and Safety Branch, that the Director had given permission to Harkins to testify was sufficient to satisfy the Board with respect to section 34(3). Finally, counsel acknowledged that there were policy ramifications in permitting Harkins to testify but stated that was for the Director to consider in deciding whether or not to grant permission to Harkins and the Director must be taken to have weighed those matters. Cases cited included: *Re Motor Transport Industrial Relations Bureau of Ontario*, (1970) 22 LAC 61 (Weatherill); *Toronto Newspaper Guild v. CCH Canada Limited*, (1974) 74 CLLC ¶16,114 (Adams); *Re Dorothea Knitting Mills Ltd. and Canadian Textile & Chemical Union et. al.* (1975), 9 O.R. (2d) 378 (Ont. Div. Ct.); *Re Canadian Workers Union and Frankel Structural Steel Ltd. et. al.* (1976), 12 O.R. (2d) 560 (Ont. Div. Ct.); *Retail Clerks Union, Local 401 v. 4 Way Wholesale Ltd.*, (1979), 79 CLLC ¶16,206 (Alta. Ind. Rel. Bd.); *Re Harry Woods Transport Ltd.* (1980), 25 LAC (2d) 60 (Weatherill); *Auto Jobbers Warehouse Ltd.*, [1982] OLRB Rep. May 649; *International Harvester Company of Canada Limited*, [1983] OLRB Rep. June 898; *General Motors of Canada Limited*, [1985] OLRB Rep. Feb. 262; *Domtar Inc.*, [1988] OLRB Rep. Aug. 780. Counsel also referred to excerpts from: Sopinka & Lederman, *The Law of Evidence in Civil Cases*, pp 457-460; *Canadian Encyclopedic Digest* (3rd edition), pp 233-234; Brown & Beatty, *Canadian Labour Arbitration* (3rd edition), pp 3-29, 3-30; Gorsky & Steinbert, *Evidence and Procedure in Canadian Labour Relations*, pp 213-215.

4. Counsel for the Ministry of Labour and the Occupational Health and Safety Branch stated that the privilege under section 34(2) of the OHSA was being waived and Harkins had been instructed to attend the Board proceedings and testify. He indicated that the Ministry had made a policy decision, that given Harkins' involvement, no other witness but Harkins could testify to those events and the Ministry wished to assist the parties and the Board by making Harkins available. It was submitted that Harkins was a "competent" witness, that section 34(2) only dealt with compellability and Harkins would attorn to the jurisdiction of the Board. Specifically, the Director had authorized Harkins to testify, pursuant to section 34(3) of the OHSA. Counsel added that, once Harkins took the stand, he should be treated as any other witness and could not raise section 34(2) thereafter during his examination or cross-examination. With respect to the position of other officials who had been involved in the various investigations and meetings, counsel stated that, while the question had taken him by surprise, the rationale proffered by the Ministry for Harkins' testifying would likewise apply to such other officials as had relevant information and the Ministry would not raise section 34(2) of the OHSA in respect of such persons if the parties sought to compel their testimony. Finally, counsel noted that the Ministry had given permission for an inspector to testify in this case only. That is, the Ministry would decide on a case by case basis if section 34(2) of the OHSA would be invoked to prevent the testimony of inspectors in other cases.

5. Mr. Dyer, as counsel for the respondent, agreed that, in the proper circumstances and despite its policy concerns, an inspector could testify. That is, counsel conceded that section 34(2) of the OHSA only addressed the "compellability" and not the "competency" of an inspector. However, it was argued there were several "preconditions" to be satisfied before Harkins could testify. Two "preconditions" appeared not to be in issue, namely, counsel for the Ministry agreed that Harkins could be treated as any other witness once he took the stand and could not thereafter raise section 34(2) of the OHSA and, further, counsel for the Ministry agreed that the same rationale for permitting Harkins to testify would apply to other officials involved in the investigation

and meetings and section 34(2) would not be raised as a bar to their testifying at the instance of either party. Counsel for the respondent submitted that a third precondition was that the Director should appear before the Board in person to give consent, pursuant to section 34(3), with reasons for so doing. Alternatively, the inspector could give his evidence in documentary form. Counsel reviewed a number of cases dealing with the compellability of the OHSA inspectors. He emphasized that the rationale for the statutory provision in section 34(2) was consistently depicted in the cases as necessary to preserve the neutrality of the inspectors' position and to encourage a neutral satisfactory resolution of the dispute. Those policy considerations, counsel argued, applied at least equally to a prohibition against an inspector voluntarily testifying at the behest of one party in litigation before the Board. Because of the negative impact on the OHSA process if an inspector voluntarily testified at the request of one party, counsel contended that the Director should be required to personally outline the rationale for permitting an inspector to testify in a particular proceeding. Cases cited included: *General Motors of Canada Limited*, *supra*; *General Motors of Canada Limited*, [1984] OLRB Rep. Mar. 459; *Domtar Inc.*, *supra*; *The Corporation of the Township of Innisfil v. The Corporation of the Township of Vespra et al.*, [1981] 2 S.C.R. 145; as well as an excerpt from *Wigmore on Evidence*, Vol 8, pp. 634-639.

6. Sections 34(2) and 34(3) of the OHSA read as follows:

34(2) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of a inspector is not a compellable witness in a civil suit or any proceeding except an inquest under *The Coroners Act, 1978*, respecting any information, material, statement or test acquired, furnished, obtained made or received under this Act or the regulations.

34(3) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations.

7. It was not disputed that the statutory language permits an inspector to refuse to testify, notwithstanding that he or she was properly served with a summons by a party and may have knowledge or information relevant to the matters at issue. The Board caselaw in this regard was not challenged: *General Motors of Canada Limited*, *supra* (Feb. 1985); *Domtar Inc.*, *supra*; *General Motors of Canada Limited*, *supra* (Mar. 1984). The Board notes that it was also not in dispute that a Board hearing is a "proceeding" within the meaning of section 34(2) of the OHSA. An issue was raised as to whether Harkins had attorned to the summons by simply appearing before the Board and whether that appearance, of itself, constituted a waiver of the protection of section 34(2) of the OHSA. In the circumstances, the Board need not finally determine that question but would note that the Board would generally be loathe to treat a mere appearance before the Board by a person served with a summons but who intended to avail himself or herself of a statutory or other "defence" to the usual consequences of proper receipt of a summons as attorning to the jurisdiction of the Board.

8. What is novel in this complaint is that this appears to be the first instance before the Board in which an inspector duly served with a summons has *not* raised section 34(2) to preclude his or her testimony. Counsel for the Ministry and the Occupational Health and Safety Branch informed the Board that the inspector in question (Harkins) had been instructed to attend the Board's proceedings and testified. In the Ministry's view, given Harkins' involvement, no other witness but Harkins could testify to those events and the Ministry wished to assist the parties and the Board by making Harkins available. Mr. Alchuk noted that this waiver of section 34(2) applied to this case only and the Ministry would decide on a case by case basis whether it would invoke the protection of section 34(2) of the Act.



9. Mr. Alchuk, on behalf of the Ministry, addressed directly several of the concerns raised by the summons. That is, Mr. Alchuk clarified that Harkins had been directed to appear by the Director pursuant to section 34(3) of the OHSA. Further, once Harkins took the stand, he would be subject to the same conditions as any other witness and could not thereafter raise section 34(2) of the OHSA. Finally, Mr. Alchuk asserted that the same rationale for permitting Harkins to testify would apply to other officials involved in the investigation and meetings and that section 34(2) would not be raised as a bar to their testifying at the instance of either party.

10. It was asserted that the Director must appear in person to satisfy the Board with respect to his authorization to Harkins to testify pursuant to the Director's right to do so in section 34(3) or, at least, conveying that authorization through counsel was insufficient. The Board disagrees. It is usual to accept the undertakings or stipulations of counsel on behalf of his or her client rather than to require the client to personally undertake or so stipulate. The Board sees no reason to adopt a different practice with respect to this matter. Mr. Alchuk informed the Board he was duly retained and authorized to appear on behalf of the Ministry and the Occupational Health and Safety Branch. The Board accepts Mr. Alchuk's stipulation that the Director, pursuant to his discretion in section 34(3), has authorized Harkins to testify.

11. Section 34(2) of the OHSA only speaks to the "compellability" of an inspector and not to his or her "competence". It would appear that there is no restriction with respect to the competence, in the legal sense of that term, of an inspector to testify as to matters within his or her personal knowledge. This aspect of section 34(2) was noted in *Domtar Inc.*, *supra*. Moreover, the wording of section 34(2) of the OHSA stands in sharp contrast to the language in two other statutes dealing with the circumstances of roughly comparable persons, which statutes do stipulate that the persons are neither competent nor compellable, namely the *Employment Standards Act*, R.S.O. 1980, c. 137 and the *Labour Relations Act*. Section 45(3) of the *Employment Standards Act* specifically provides that:

45(3) No employment standards officer is a competent or compellable witness in a civil suit or proceeding respecting any information, material or statements acquired, furnished, obtained, made or received under the powers conferred under this Act except for the purposes of carrying out his duties under this Act.

Section 111(6) of the *Labour Relations Act* stipulates that:

111.-(6) No information or material furnished to or received by a labour relations officer under this Act and no report of a labour relations officer shall be disclosed except to the Board or as authorized by the Board, and no member of the Board and no labour relations officer is a competent or compellable witness in proceedings before a court, the Board or other tribunal respecting any such information, material or report.

[Sections 111(4) and 111(5) of the *Labour Relations Act*, as well, address both the competence and compellability of various other Ministry officers and conciliation board members.]

12. The jurisprudence confirms the statutory language, in that the various officials have not been required to testify, despite proper service of a summons although the issues in those cases appear to have focused on compellability rather than competence; see *C.E. Jamieson & Co. (Dominion) Limited*, [1985] OLRB Rep. Mar 375; *Re Harry Woods Transport*, *supra*; *Seven Up/Pure Spring Ottawa*, [1984] OLRB Rep. Jan. 87; *Plaza Fiberglas Manufacturing Limited*, [1985] OLRB Rep. Oct. 1503; *Shaw-Almex Industries Limited*, [1984] OLRB Rep. Jan. 109; *Toronto Newspaper Guild v. CCH Canadian Limited*, *supra*; *Auto Jobbers Warehouse*, *supra*. Thus, the absence of the term "competent" from section 34(2) of the OHSA, particularly in light of the express use of both

“competent” and “compellable” in the *Labour Relations Act* and the *Employment Standard Act* would support the conclusion that Harkins is a competent witness.

13. Counsel for the respondent argued, in part, that the policy considerations enunciated in the jurisprudence as the rationale for an inspector’s non-compellability applied equally to a prohibition against an inspector *voluntarily* testifying at the behest of one party. It is useful to refer to the following passage from *General Motors of Canada, supra*, (Feb. 1985) at paragraph 6 which elaborates on the rationale for section 34(2):

As noted in our earlier ruling, if an inspector is to be able to perform his important functions under the Act, he must be able to freely obtain information from persons in the workplace and carry out his other tasks in a context in which neither he nor the persons with whom he speaks or interacts will feel constrained by the possibility that he may subsequently be compelled to testify at the instance of one of the parties to proceedings such as a complaint under section 24 of the Act. Moreover, as submitted by Mr. Rolph, the protection provided by section 34(2) of the Act ensures that the inspector’s position as a neutral investigator and decision-maker will not be tarnished by the appearance of partisanship which could result if he were required to testify at the behest of an employee, an employer, or a union, in a civil suit or administrative proceeding, such as the present complaint, respecting any information, material, statement or test acquired, furnished, obtained, made or received under the Act or the regulations. Thus, we are of the view that the interpretation that we have placed on section 34(2) in our previous ruling and in the present ruling is the type of “fair, large and liberal construction or interpretation” mandated by section 10 of the *Interpretation Act* and best suited to attaining the object of the Act according to its true intent, meaning, and spirit.

This theme of perceived neutrality as an investigator and decision-maker untainted by the appearance of partisanship is likewise reflected in *General Motors of Canada, supra*, (Mar. 1984) and *Domtar Inc., supra*. Indeed, this concept of neutrality and the roles of mediators, conciliators and labour relations officers in the settlement process are echoed throughout the cases dealing with the statutory protections against “compellability” and “competence” in the *Labour Relations Act* and the *Employment Standards Act* (see *C.E. Jamieson, supra*; *Re Harry Woods Transport, supra*; *Seven Up/Pure Spring Ottawa, supra*; *Plaza Fiberglas, supra*; *Shaw-Almex Industries, supra*; *Toronto Newspaper Guild, supra*; *Auto Jobbers Warehouse, supra*). The Board considers that the policy concerns expressed in the *General Motors* passage quoted above may well apply with equal force to the question of “competence”. It does seem somewhat anomalous to make an inspector “non-compellable” to preserve his or her role as a neutral, non-partisan investigator or decision-maker only to permit the investigator to testify *voluntarily* at the behest of one or other party. Nonetheless, that anomaly exists by virtue of the statutory wording of section 34(2). The Board simply cannot read “competence” into section 34(2). The reference is not there and, in its absence, the Board finds that Harkins is a competent witness.

14. For the foregoing reasons, the Board finds that Harkins is a competent witness. The hearing is to continue on the days previously scheduled.

**CONCURRING DECISION OF BOARD MEMBERS D. A. PATTERSON AND J. A. RONSON:**  
December 11, 1989

1. We would add the following comments. As representatives of trade unions and employers respectively, we were perplexed when the inspector, Mr. J. Harkins, appeared before us in answer to the complainant’s subpoena, and advised that the Occupational Health and Safety Branch of the Ministry of Labour did not object to this appearance as a witness in these proceedings.

2. We were mindful of the reasoning found in *General Motors of Canada Limited*, [1985]

OLRB Rep. Feb. 262. The following excerpt set out the interpretation of the governing legislation which, to the Board, best fulfilled the intent and purpose of the *Occupational Health and Safety Act*:

As noted in our earlier ruling, if an inspector is to be able to perform his important functions under the Act, he must be able to freely obtain information from persons in the workplace and carry out his other tasks in a context in which neither he nor the persons with whom he speaks or interacts will feel constrained by the possibility that he may subsequently be compelled to testify at the instance of one of the parties to proceedings such as a complaint under section 24 of the Act. Moreover, as submitted by Mr. Rolph, the protection provided by section 34(2) of the Act ensures that the inspector's position as a neutral investigator and decision-maker will not be tarnished by the appearance of partisanship which could result if he were required to testify at the behest of an employee, an employer, or a union, in a civil suit or administrative proceeding, such as the present complaint, respecting any information, material, statement or test acquired, furnished, obtained, made or received under the Act or the regulations. Thus, we are of the view that the interpretation that we have placed on section 34(2) in our previous ruling and in the present ruling is the type of "fair, large and liberal construction or interpretation" mandated by section 10 of the *Interpretation Act* and best suited to attaining the object of the Act according to its true intent, meaning, and spirit.

3. On a subsequent hearing day, counsel for the Ministry of Labour and the Occupational Health and Safety Branch appeared before us and advised that the Director had directed Mr. Harkins to testify because only Mr. Harkins could give evidence of his involvement in the dispute before us. With the greatest respect to Ministry counsel, who was not present during the first 19 days of these proceedings, it seems to us that such reasoning could apply to each and every safety related dispute that comes before the Board.

4. In our representative capacities we mirror the desire of our respective communities of interest to see that the *Occupational Health and Safety Act* functions in the most efficient manner according to what we perceive to be its guiding intent and spirit. Having said that, it is clear to us that under the legislation it is the Director's obligation to make policy decisions, and it is not our function to call them into question. We therefore concur with Vice-Chair Tacon that the inspector is a competent witness duly directed by the Director to testify before us.

---

## **2382-88-U Energy and Chemical Workers Union, Complainant v. G. Lemaire and Chinook Chemicals Company, Respondents**

**Intimidation and Coercion - Reconsideration - Remedies - Unfair Labour Practice - Complainant requesting reconsideration on ground Board failed to make decision on merits - Board not required to decide on merits where lack of appropriate remedy makes issue moot - Board having discretion to inquire into section 89 complaint - Application dismissed**

**BEFORE:** Owen V. Gray, Vice-Chair, and Board Members W. A. Correll and C. McDonald.

**DECISION OF THE BOARD;** December 6, 1989

1. By letter dated November 8, 1989, counsel for the complainant asks that we reconsider our decision of October 6, 1989 in this matter (reported at [1989] OLRB Rep. Oct. 1021). His request for reconsideration reads as follows:



I am writing to request that the Board reconsider its decision in the above matter as it pertains to the alleged violation of section 70 of the Act by the respondent Lemaire.

As I understand that portion of the decision, the Panel dismissed the complaint on the grounds that it did not consider the remedy specified therein to be appropriate. Because of its views with respect to the complainant's submissions concerning appropriate remedy, the Panel found it unnecessary to reach any conclusion as to the alleged violation of section 70.

This approach to the resolution of this complaint is rather odd considering the language of section 89. In my submission, that section contemplates the determination of an appropriate remedy once the Board is satisfied that a respondent has acted contrary to the Act. Once that finding has been made, section 89 confers jurisdiction on the Board to fashion an appropriate remedy, whatever that might be. Certainly, I can understand that the Board might decline to grant the remedy requested but surely that is something quite different than dismissing the complaint because one disagrees with a particular remedy requested. Surely this does not, or ought not to, preclude the possibility that another remedy, which is appropriate, does exist.

With all due respect, it is submitted that the complainant is entitled to a decision concerning the alleged violation of section 70 by Mr. Lemaire and, in the event that a breach is found to have occurred, [sic] the complainant ought to have a fair opportunity to address the concerns raised in the Panel's decision. I might add, that, to the best of my recollection, none of these concerns were expressed by the respondents or the Panel during the course of the hearing last February.

2. The Board has the power under subsection 106(1) of the *Labour Relations Act* ("the Act"), "if it considers it advisable to do so", to "reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling". As the Board observed in *John Entwistle Construction Limited*, [1979] OLRB Rep. Nov. 1096:

The Board exercises its jurisdiction under [subsection 106(1)] of the Act to reconsider and vary or revoke any decision with care and caution in order not to undermine the finality of its decisions and, as stated by the Board in *Canadian Union of General Employees*, [1975] OLRB Rep. April 320:

"Generally, the Board will not reconsider a decision unless a party proposes to adduce new evidence which could not previously have been obtained by reasonable diligence and the new evidence is such that, if adduced, it would be practically conclusive or a party wishes to make representations or objections not already considered by the Board that he had no opportunity to raise previously."

The Board's Practice Note No. 17 provides that:

...

2. A request for reconsideration should be submitted in writing, addressed to the Registrar of the Board, along with all of the submissions in support thereof. The party requesting reconsideration should file with the Registrar four (4) copies of the request for reconsideration and submissions in support, together with an additional copy for each of the other parties to the original proceeding.

...

3. Having regard to the Board's jurisprudence and paragraph 2 of its Practice Note No. 17, a written request for reconsideration should in some way or other:

- (a) identify the decision, order, direction, declaration or ruling which the requestor wishes reconsidered;
- (b) contain a concise statement of the new evidence, if any, on which the requestor

wishes the Board to act in rescinding or varying its previous decision, order, direction, declaration or ruling, together with a concise statement of the facts and law on which it relies in support of its request that this new evidence be entertained;

- (c) contain a concise statement of the new submissions, if any, on which the requestor wishes the Board to base a decision varying or rescinding its previous decision, order, direction, declaration or ruling, together with a statement of the facts and law on which it relies in support of the proposition that these new submissions should be entertained; and,
- (d) set out the decision, order, direction, declaration or ruling which the complainant wishes the Board to substitute for the one which is the subject of the request for reconsideration.

4. The decision which the complainant asks us to reconsider is identified in the request for reconsideration: it is our decision with respect to the alleged violation of section 70 of the Act by the respondent Lemaire.

5. It does not appear that the complainant seeks to introduce any new evidence.

6. The complainant says that it ought to have a "fair opportunity to address the concerns raised in the panel's decision." The implication is that our decision speaks to issues which the complainant did not have a fair opportunity to address at the conclusion of our hearings in these matters. Counsel for the complainant does not say what issues those are, nor does he say what submissions the complainant would make about those issues if given the opportunity to do so. The application for reconsideration is deficient insofar as it fails to provide that information.

7. The application for reconsideration contains the assertion that the complainant "is entitled to a decision concerning the alleged violation of section 70 by Mr. Lemaire", from which we take it the complainant asserts entitlement to a decision about whether Mr. Lemaire's conduct contravenes section 70 or not. Further, the complainant seems to assert that a complainant is "entitled" to a decision about whether certain conduct constitutes a violation of a section of the *Labour Relations Act* even if the alleged violation has not caused the complainant or any grievor on whose behalf it complains any detriment for which the Board would be willing or able to impose a remedy. We do not accept that proposition.

8. There may be instances in which it is desirable for the Board to pronounce on the propriety of behaviour even when such a declaration is the only remedy sought or appropriate. Equally, there will be occasions when it is inappropriate and undesirable to pronounce on the propriety of behaviour when no actual loss or damage, tangible or intangible, has been caused by that behaviour. We concluded that this case was of the latter sort. In the absence of circumstances warranting any remedy, the legal question was academic. We are not aware of any principle of law which compels the determination of academic or moot questions of law. Moreover, the Board has a discretion about whether or not to inquire into a complaint under section 89. That discretion is one which ought to be exercised in a rational way with regard to the nature of the complaint, among other things. The Board surely does not lose that discretion by hearing evidence about the complaint. Accordingly, we reject the proposition that the complainant was "entitled" in these circumstances to a decision about whether Mr. Lemaire had violated section 70.

9. The complainant asserts that its complaint was dismissed because we disagreed with the particular remedy it had requested. We concluded that the conduct by Lemaire which the complainant said was a violation of section 70 did not result in the loss which the remedy sought by the complainant would have redressed. The complainant had not identified any other remediable loss which could be said to have resulted from the conduct in question. We concluded that there was no

such other loss. We also considered whether a cease and desist or “injunctive” remedy would be appropriate if the conduct complained of did contravene the Act. We concluded it would not. In short, we concluded that there was no appropriate remedy if the conduct in question contravened the Act. While its request for reconsideration suggests that some remedy other than the one it requested might be appropriate, the complainant does not identify that remedy. In that respect, it has failed to set out in its request for reconsideration the decision, order, direction, declaration or ruling which it wishes the Board to substitute for the one which is the subject of its request.

10. As the request for reconsideration does not on its face set out sufficient grounds for that relief, it is unnecessary for us to request or entertain submissions from the respondent Lemaire. The request is hereby denied.

---

## **1292-89-M Ontario Nurses’ Association, Applicant v. Hotel Dieu of St. Joseph’s Hospital of Windsor, Respondent**

**Employee reference - Practice and Procedure - Board outlining information to be filed in employee reference and Board procedure**

**BEFORE:** *S. A. Tacon*, Vice-Chair, and Board Members *D. A. MacDonald* and *B. L. Armstrong*.

**DECISION OF THE BOARD;** December 21, 1989

1. This is an application pursuant to section 106(2) of the *Labour Relations Act* in which the applicant seeks a determination as to whether persons working as Critical Care Instructor, namely, Susan Elliott, Margaret Blazer, Concepcion Jimenez, and Cheryl Boudreau, are employees for purposes of the Act.

2. In *The Windsor Star*, 1988] OLRB Rep. April 427 at paragraph 14, the Board outlined the information which thenceforth would be required in section 106(2) applications:

14. Therefore, the Board will no longer restrict the evidence to be adduced before a Board Officer with respect to the duties and responsibilities of the person(s) in dispute to “changes” in those duties and responsibilities, as in the past. Section 106(2) applications commonly are initiated through an often sparse letter to the Board merely naming the individual(s) in dispute. Henceforth, the applicant must, in addition, indicate the basis for the application, i.e., the nature of the position, including duties and responsibilities (to the extent known, where the applicant is a trade union), the historical dimension to the position (if any) including any Board determinations and parties’ agreements and how the mischief against which sections 1(3)(b) or 12 are directed has arisen or has ceased. The respondent must outline fully any grounds it asserts as to why the Board should not entertain evidence as to the duties and responsibilities of the person(s) in dispute. The Board must be satisfied a “question” has arisen as to the “employee” or “guard” status of the individual(s) in dispute before a duties and responsibilities examination will be directed. Where the individual’s status has not been previously determined by the Board in a certification or earlier 106(2) application or by specific agreement of the parties, an examination will generally be directed. Where the Board has previously determined the status of a person in a certification application or prior section 106(2) application or where the parties have reached a specific agreement as to the person’s status, the Board will not permit evidence as to the person’s duties and responsibilities to be adduced before a Board Officer unless the Board is so satisfied, on the face of the application, that it appears the mischief against which section 1(3)(b) or section 12 is directed has arisen or has ceased. Where the Board



is not satisfied, the application may be dismissed without a hearing. In the Board's opinion, this policy does not undermine agreements of the parties as to the person's status and avoids repeated or frivolous examinations, yet provides sufficient flexibility to adequately respond to circumstances where the mischief against which sections 1(3)(b) and 12 are directed has arisen or has ceased.

3. When an application under section 106(2) is received, the Registrar acknowledges the application, directs the applicant's attention to the relevant passages in *The Windsor Star* decision, *supra*, and establishes a deadline for receipt of the required information. The applicant's materials are circulated to the respondent for reply by a specified date and the respondent, as well, is directed to the relevant excerpt from *The Windsor Star*, *supra*. Finally, the respondent's reply, if any, is circulated to the applicant for comments, again, with a deadline established. The Board considers the material filed and, in the context of the principles set out in *The Windsor Star*, *supra* (paragraphs 8 to 15 in particular), either appoints a Board Officer to conduct a duties and responsibilities examination of the person(s) in dispute or declines to do so.

4. In its initial application, the applicant named the incumbents in the position of Critical Care Instructor, noted the position has been in existence for some time and enclosed a job description. The respondent submitted that the applicant had failed to comply with the informational requirements set out in *The Windsor Star*, [1988] OLRB Rep. April 114, particularly with respect to the historical dimension of the position and how the mischief against which section 1(3)(b) is directed has arisen or ceased. In a subsequent letter, the respondent asserted that the position of Critical Care Instructor, in existence since 1981, was an outgrowth of the In-Service Instructor position in place since prior to certification in 1972 and, further, that the applicant has never contended that the Critical Care Instructors should be included in the bargaining unit. The respondent maintained its view that the application should be dismissed for non-compliance with the criteria in the *The Windsor Star*, *supra*, and, in the alternative, requested a hearing to determine whether a "question" has arisen within the meaning of section 106(2). Finally, in its reply, the applicant asserted, in some detail, that the Critical Care Instructor is quite distinct from the In-Service Instructor and reiterated its position that a "question" has arisen and a Board Officer should be appointed.

5. In *The Windsor Star*, *supra*, the Board indicated (in the passage quoted above) that "where the Board has previously determined the status of a person in a certification application or prior section 106(2) application or where the parties have reached a specific agreement as to the person's status, the Board will not permit evidence as to the person's duties and responsibilities to be adduced before a Board Officer unless the Board is satisfied, on the face of the application, that it appears the mischief against which section 1(3)(b) or section 12 is directed has arisen or had ceased". This approach seeks to balance the interest in upholding prior agreements of the parties and avoiding repeated or frivolous examinations against the need for flexibility to adequately respond to circumstances where the mischief noted has arisen or ceased. In the instant case, it does not appear that the persons classified as Critical Care Instructors have had their status determined in a certification application, prior section 106(2) application or in a specific agreement of the parties. The parties are in dispute as to the relationship between the Critical Care Instructor and the In-Service Instructor, the latter category having been in existence at the time of certification.

6. Nonetheless, the Board will not appoint a Board Officer to conduct a duties and responsibilities examination unless the material before the Board, on its face, appears to indicate that the mischief against which section 1(3)(b) is directed has arisen or ceased. In making this assessment, the Board must be sensitive to the position of a trade union applicant which may not have as complete a view of the duties and responsibilities as a respondent. When the applicant's material is taken together, the Board considers that the informational requirements have been satisfied. It

may well be that the applicant's position is ultimately not successful. However, in the Board's view, the factual assertions of the parties, in the context of the other material filed, are sufficient to persuade the Board that a "question" has arisen between the parties as to the status of the persons classified as Critical Care Instructors. The historical context at the time of certification and subsequently may well be relevant evidentiary matters in addition to the current duties and responsibilities of the persons in dispute. In these circumstances, the Board is not persuaded by the respondent's argument in the alternative that a hearing should be convened to determine whether a "question" has arisen.

7. For the foregoing reasons, the Board is satisfied that a "question" exists between the parties as to the "employee" status of the individuals in dispute. Accordingly, a Board Officer is hereby appointed to inquire into the duties and responsibilities of the persons named in paragraph 1 above.

8. This matter is referred to the Registrar.

---

**2171-89-G International Brotherhood of Painters and Allied Trades Local 1795 - Glaziers, Applicant v. King Glass Limited/King Glass, Respondent**

**Practice and Procedure - Witness - Board reviewing authority for enforcing attendance of witnesses - Board issuing arrest warrant for previously subpoenaed material witness who failed to attend**

**BEFORE:** *Ken Petryshen*, Vice-Chair, and Board Members *G. O. Shamanski* and *C. A. Ballentine*.

**APPEARANCES:** *George McMenemy* for the applicant; no one appearing on behalf of the respondent.

**DECISION OF THE BOARD;** December 20, 1989

1. The applicant has referred a grievance concerning the interpretation, application, administration or alleged violation of a collective agreement to the Board for final and binding determination.

2. This application was scheduled for hearing on December 18, 1989. Notice of hearing of this application was served on the parties. The Board is satisfied that Casey S. Locke was duly served with a subpoena *duces tecum* which required Casey S. Locke to attend at the hearing in this matter on December 18, 1989. The respondent was not present at the hearing and Casey S. Locke did not appear and give evidence at the hearing before the Board on December 18, 1989. The applicant has requested that the Board issue a warrant for the arrest of Casey S. Locke so that the Board can ensure and direct compliance with its summons.

3. The Board has on previous occasions issued arrest warrants. In *Standard Insulation Limited*, [1984] OLRB Rep. Feb. 383, the Board examined its authority to issue an arrest warrant. At page 384 the Board stated its views in paragraph 6 as follows:

6. The authority of the Board to summon and enforce the attendance of witnesses is provided for in section 103(2)(a) of the *Labour Relations Act*. Sections 44(8) and 124(3) also provide for the power of an arbitrator or the chairman of an arbitration board or the Board to summon and enforce the attendance of witnesses. The instant referral has been made under section 124 of the *Labour Relations Act*. When the Board is acting as an arbitrator the enforcement procedures contained in sections 12 and 13 of the *Statutory Powers Procedure Act* do not apply to arbitrators under the *Labour Relations Act*. See section 3(2)(d) of the *Statutory Powers Procedure Act*, *Casalbil Contractor Limited*, [1980] OLRB Rep. Sept. 1278, and *Re International Association of Heat & Frost Insulators & Asbestos Workers Local 95 and Master Insulators Association of Ontario et al.* 99 D.L.R. (3d) 757; 25 O.R. (2d) 8. The power to enforce the attendance of witnesses when the Board is entertaining a referral under section 124 is therefore to be found in the provisions of the *Labour Relations Act*. Under the provisions of section 103(2)(a), a Board has the power to enforce the attendance of witnesses in the same manner as a court of record in civil cases. This authority includes that power to issue a warrant for the arrest of a person who has failed to appear when duly served with a summons. See *Casalbil Contractor Limited*, *supra*, at page 1279. The powers which the Board currently exercises in this regard with respect to proceedings under section 124 were formerly exercised by it with respect to all of its proceedings under the Act before the application of the *Statutory Powers Procedure Act* to the Board.

4. As was stated earlier, the Board is satisfied that Casey S. Locke was duly served with a subpoena *duces tecum* which required Casey S. Locke to attend at the hearing in this matter on December 18, 1989. Casey S. Locke did not attend and give evidence at the hearing before the Board on December 18, 1989. The Board is also satisfied that the presence of Casey S. Locke is material to the ends of justice in that his evidence is required in order for the Board to make a determination in this matter.

5. Having regard to the foregoing, the Board issues an arrest warrant in the usual form requiring the presence of Casey S. Locke at 9:30 a.m. on January 16, 1990, at the continuation of its hearing in this matter at the Board's hearing rooms on the sixth floor of 400 University Avenue in the City of Toronto.

6. This matter is referred to the Registrar to be listed for continuation of hearing on January 16, 1990. This panel is not seized of the merits of this application.

---

## 2023-89-R Labourers' International Union of North America, Local 183, Applicant v. Macdero Construction Limited, Respondent

**Certification - Construction industry - Board construing statement in respondent's reply about its parking business to be claim respondent not engaged in construction industry - Board jurisdiction to certify under construction provisions dependent on employer operating business in construction industry - Board directing hearing into whether employer operating business in construction industry**

**BEFORE:** *N. B. Satterfield*, Vice-Chair, and Board Members *W. N. Fraser* and *J. Redshaw*.

**DECISION OF THE BOARD;** December 7, 1989

1. The name of the respondent is amended to read: "Macdero Construction Limited".
2. The applicant has brought this application under the construction industry provisions of



the *Labour Relations Act*. The reply endorses the description of the bargaining unit proposed by the applicant. Stated in general terms that unit is all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry in the Board's geographic area #8.

3. Subsection 102(14) of the Act gives the Board discretion to determine applications for certification to which sections 117 to 119 apply; that is, applications which have been brought properly under the construction industry part of the Act. The reply in this application was completed so as to request that the Board hold a hearing into it. The reasons given in support of the respondent's request are:

- A. For approximately the last five years our company has been involved in the maintenance of parking garages. The services we offer to our clients on an ongoing basis, are designed to prevent further deterioration and maintain the integrity of each structure. We prevent further harmful effects of untreated concrete by the application of water-proof membranes.
- B. Misrepresentation was made to the employees by Mr. Leo D'Agostini, the Business Representative of the Applicant. Namely, Mr. D'Agostini, in order to insure that employees signed authorization cards, informed them that if they joined the union they would be paid \$18.00 - \$19.00 per hour right away. The company superintendent (Mr. Bruno Porciello) was informed of this by one of our employees. (The name shall be withheld for confidentiality reasons but he will be produced as a witness at the hearing.) As a result of this action on the part of the union it is the employers submission that the true desires of the employees to be represented by a union are incorrect. Additionally, at the very least we would submit that the unions membership evidence is sufficiently tainted that it cannot be given any weight. We request that the membership evidence be disregarded and the application be dismissed.

4. Were the request for a hearing based solely on the misrepresentations alleged in paragraph B, no useful purpose would be served, in the Board's view, by holding a hearing into the application. This is because absent particularized allegations that the applicant used coercion or threats to obtain its membership evidence, employees' economic considerations are irrelevant to the voluntariness of the membership evidence and the Board will not inquire into those considerations. See *Dominion Paving Limited*, [1986] OLRB Rep. June 705.

5. The reason stated in paragraph "A", however, appears to be a claim that the respondent is not engaged in the construction industry. In order for the Board to certify a trade union under the construction industry provisions of the Act, the Board must be able to find that it is a trade union which pertains to the construction industry within the meaning of clause (f) of section 117 of the Act, that the employees for whom it seeks to become exclusive bargaining agent are employees as defined in clause (b) of that section and the respondent is a person who operates a business in the construction industry, in other words, an employer within the meaning of clause (c) of section 117. The construction industry is defined in clause (f) of subsection 1(1) of the Act. The statement in paragraph "A" raises an issue of whether the respondent is an employer within the meaning of clause (c) of section 117. That issue goes directly to the Board's jurisdiction to certify the applicant. Clearly, a hearing into that issue would serve a useful purpose.

6. Therefore, the Registrar is directed to list this application for hearing for the purpose of receiving the evidence and representations of the parties respecting all matters arising out of and incidental to the application, including in particular whether the respondent operates a business in the construction industry.

---

**1533-88-R; 1534-88-R; 1535-88-R Metropolitan Toronto Sewer and Watermain Contractors Association, Applicant v. International Union of Operating Engineers, Local 793, Respondent v. Ontario Concrete and Drain Contractors Association, Intervener #1 v. Labourers International Union of North America, Local 183, Intervener #2 v. Teamsters' Local Union 230, Intervener #3 v. Metropolitan Toronto Road Builders Association, Intervener #4 v. Canadian Automatic Sprinkler Association, Intervener #5 v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46, Intervener #6 v. The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Intervener #7 v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 853, Intervener #8 v. Metropolitan Toronto Apartment Builders Association, Intervener #9 v. Toronto Construction Association, General Contractors Section, Intervener #10 v. Sarnia Construction Association, Intervener #11 v. Construction Association of Thunder Bay, Intervener #12 v. Sudbury Construction Association, Intervener #13 v. Electrical Power Systems Construction Association, Intervener #14; Metropolitan Toronto Sewer and Watermain Contractors Association, Applicant v. Teamsters' Local Union 230 and a Council of Trade Unions acting as the representative and agent of Teamsters' Local Union 230 and Labourers' International Union of North America, Local Union 183, Respondents v. Ontario Concrete and Drain Contractors Association, Intervener #1 v. Labourers International Union of North America, Local 183, Intervener #2 v. International Union of Operating Engineers, Local 793, Intervener #3 v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46, Intervener #4 v. The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Intervener #5 v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 853, Intervener #6 v. Metropolitan Toronto Apartment Builders Association, Intervener #7 v. Toronto Construction Association, General Contractors Section, Intervener #8 v. Sarnia Construction Association, Intervener #9 v. Construction Association of Thunder Bay, Intervener #10 v. Sudbury Construction Association, Intervener #11 v. Electrical Power Systems Construction Association, Intervener #12; Metropolitan Toronto Sewer and Watermain Contractors Association, Applicant v. Labourers' International Union of North America Local Union 183 and a Council of Trade Unions acting as the representative and agent of Teamsters' Local Union 230 and Labourers' International Union of North America, Local Union 183, Respondents v. Ontario Concrete & Drain Contractors Association, Intervener #1 v. Ontario Precast Concrete Manufacturers' Association, Intervener #2 v. The Residential Low-Rise Forming Contractors Association of Metropolitan Toronto and Vicinity, Intervener #3 v. Teamsters**



Local Union 230, Intervener #4 v. International Union of Operating Engineers, Local 793, Intervener #5 v. The Heavy Construction Association of Toronto, Intervener #6 v. Metropolitan Toronto Road Builders Association, Intervener #7 v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46, Intervener #8 v. The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Intervener #9 v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 853, Intervener #10 v. Canadian Automatic Sprinkler Association, Intervener #11 v. Metropolitan Toronto Apartment Builders Association, Intervener #12 v. Toronto Housing Labour Bureau, Intervener #13 v. Toronto Construction Association, General Contractors Section, Intervener #14 v. Sarnia Construction Association, Intervener #15 v. Sudbury Construction Association, Intervener #16 v. Construction Association of Thunder Bay, Intervener #17 v. Electrical Power Systems Construction Association, Intervener #18.

**Accreditation - Board able to define unit of employers and satisfy double majority test whether or not two of employers included - Accreditation should not be delayed while Board resolves issues which do not affect final disposition - Accreditation orders issuing**

**BEFORE:** *N. B. Satterfield*, Vice-Chair, and Board Members *W. Gibson* and *H. Kobryn*.

**APPEARANCES:** *G. W. Adams*, *R. J. Charney*, *D. L. Gee* and *R.W.A. Cochran* for the applicant; *S.B.D. Wahl*, *J. Steffanini*, *I. Raymond* and *R. Kennedy* for Labourers International Union of North America, Local 183; Teamsters Local Union 230; and International Union of Operating Engineers, Local 793; *S. C. Bernardo*, *B. Binning*, *J. Liberman* and *R. Werry* for the Toronto Housing Labour Bureau; Ontario Precast Concrete Manufacturers' Association; The Residential Low-Rise Forming Contractors Association of Metropolitan Toronto and Vicinity; The Heavy Construction Association of Toronto; Metropolitan Toronto Road Builders Association; Sarnia Construction Association; Construction Association of Thunder Bay; Sudbury Construction Association; and the employers listed on Appendix "A" of this decision; *Hercules E. Faga* for Ontario Concrete and Drain Contractors Association; *Donald B. Francis* for Canadian Automatic Sprinkler Association; *Roy Filion*, *Carl Peterson* and *Karl Mallette* for Metropolitan Toronto Apartment Builders Association; *Laurence C. Arnold* and *Vince McNeil* for the Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46; *Lionel G. Clarke* for United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 853; *H. A. Beresford* for Ontario Hydro and Electrical Power Systems Contractors Association; *Les Braun* for Wm. Groves Limited; *Carl Peterson* for Catalytic Maintenance Inc.; Union Gas Ltd.; Viewmark Homes Ltd.; Mastercraft Bridge & Engineering Construction (Ottawa) Limited; Vipond Automatic Sprinkler Company Limited; Gottardo Contracting (1980) Inc.; Landmark Contracting Ltd.; Conservatory Construction Company Limited; Stearns Catalytic Limited; and Gottcon Contractors Ltd.; *M. G. Horan* for Frankfurt Investments Limited; and Landford Developments Limited; *Ed Zacharczuk* for Ross Hartrick (1978) Limited; *S. A. Bernofsky* for C & M Construction (Kingston) Ltd.; and Inducon Construction (Northern) Limited; *Irv Kleiner* for H. G. Susgin Construction Ltd.; *Maureen F. Fitzgerald* for Wm. Parker Construction Limited; *Richard J. Nixon* and *Chris Taylor* for Paul Daoust Construction Limited; *Fred Heerema* for Giffin



Sheet Metals Limited; *Emidio Pavone* for Emico Contracting Inc.; *Robin B. Cumine* for Steinberg Inc.; *D. Fryzuk* for Armbro Materials & Construction Ltd.

**DECISION OF THE BOARD;** December 19, 1989

1. The Board issued a decision dated November 3, 1989 in which certificates of accreditation issued to the applicant in each of these applications. The reasons for the decision were to be issued later. The certificates were issued even though the Board had not finally determined whether Elirpa Construction & Materials Ltd. and Ontario Paving Company Limited in File No. 1533-88-R and Ontario Paving Company Limited in File No. 1535-88-R were employers who, during the year preceding the making of the relevant application, employed employees for whom the trade union respondent to that application held the requisite bargaining rights. If they were such employers, they would be among those employers to whom the double majority test of subsection 127(2) of the *Labour Relations Act* must be applied to determine whether the Board can accredit an employers' organization as the exclusive bargaining agent of all employers in the unit of employers. This decision sets out the Board's reasons for concluding that it had jurisdiction in those two applications to accredit the applicant and that it should exercise its jurisdiction. The decision also sets out the Board's detailed findings under subsection 127(1) and (2) of the Act for all three applications.

2. The accreditation provisions of the Act are to employers and employers' organizations what the certification provisions are to employees and trade unions. Just as a trade union which demonstrates the level of support required by subsections 7(2) or 7(3) amongst the employees in a bargaining unit of employees found by the Board to be appropriate for collective bargaining purposes pursuant to subsection 6(1) of the Act becomes the exclusive bargaining agent for all employees in the defined unit, an employers' organization which demonstrates that it represents sufficient employers in a unit of employers found by the Board to be appropriate for collective bargaining pursuant to section 126 to satisfy the subsection 127(2) double majority test, becomes the exclusive bargaining agent of all employers in the unit.

3. In an application for certification made under section 5 of the Act, the Board found it had jurisdiction to issue a final certificate to the applicant, and should do so, even though there was an unresolved question of whether any of five persons were employees who would be included in the unit: *Robin Hood Multifoods Inc.*, [1985] OLRB Rep. July 1159. The Board had been able to define a unit of employees which was appropriate for collective bargaining as required by subsection 6(1) of the Act. The definition (or composition) of the unit would not have been affected by any possible answer to the outstanding question. The Board had been able also to determine that more than fifty-five per cent of the employees in the defined unit would have been members of the applicant at the time for determining that question whether or not any, some or all of the five persons in question were among those employed in the unit.

4. The Board came to the conclusion that it had jurisdiction to issue a final certificate after a thoughtful and concise analysis of sections 6 and 7 of the Act. It dealt also with subsections 1(3)(b) and 106(2) which were relevant to the outstanding issue. After its analysis the Board stated:

11. We are satisfied that where, as here, the description of the appropriate bargaining unit has been settled and the Board can say with certainty that more than 55 per cent of the employees in that unit on the application date were members of the applicant at the relevant time, the Board does have the jurisdiction to grant the applicant a final certificate, notwithstanding the existence of questions which could be dealt with in an application under subsection 106(2). Although the parties to this application agreed to attempt settlement of those questions before asking the

Board to answer them, their agreement played no part in our conclusion on the jurisdictional question. The Board would have jurisdiction to grant a final certificate in these circumstances even if there were no such agreement.

12. There was no suggestion in this case that the bargaining unit description would be affected by a determination of the employee status of the disputed individuals. We need not deal here with the question whether and to what extent the Board must or ought to continue to resolve questions of the application of subsection 1(3)(b) in the fine tuning of a bargaining unit description when those questions do not otherwise affect the result.

The principle that the issuing of a certificate in an application for certification should not be delayed while the Board resolves issues which would not in any event affect the final disposition of the application is, by analogy, equally applicable to delaying the issuing of an accreditation certificate until every employer on Final Schedule "E" is determined where, in any event, the resolution of the remaining list issues cannot affect the applicant's entitlement to an accreditation certificate.

5. That the analogy fits may be seen by examining the legal analysis of sections 6 and 7 of the Act at paragraphs 7, 8 and 9 in *Robin Hood, supra*, and applying it to sections 126 and 127 of the Act:

7. Section 6 of the Act speaks to the appropriate bargaining unit. Subsection (1) provides:

Subject to subsection (2), upon an application for certification, the Board shall determine the unit of employees that is appropriate for collective bargaining, but in every case the unit shall consist of more than one employee and the Board may, before determining the unit, conduct a vote of any of the employees of the employer for the purpose of ascertaining the wishes of the employees as to the appropriateness of the unit.

The bargaining unit is an abstraction, a generic description of an employee group, the composition of which is defined in terms of the inclusion or exclusion of employees according to the nature of the work each performs. The bargaining unit is defined without reference to the identity of any particular employee. Bargaining rights are not restricted to persons employed at the time those rights are acquired; at any given time bargaining rights will extend to all persons then employed at jobs which fall within the scope of the bargaining unit description.

8. A question of bargaining unit composition is concerned with identifying the sorts of employees who will be included in or excluded from the unit, and not with determining which persons are employees of the included sort at a given time. The latter question is addressed by section 7 of the Act:

7.-(1) Upon an application for certification, the Board shall ascertain the number of employees in the bargaining unit at the time the application was made and the number of employees in the unit who were members of the trade union at such time as is determined under clause 103(2)(j).

(2) If the Board is satisfied that not less than 45 per cent and not more than 55 per cent of the employees in the bargaining unit are members of the trade union, the Board shall, and if the Board is satisfied that more than 55 per cent of such employees are members of the trade union, the Board may direct that a representation vote be taken.

(3) If on the taking of a representation vote more than 50 per cent of the ballots cast are cast in favour of the trade union, and in other cases, if the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union, the Board shall certify the trade union as the bargaining agent of the employees in the bargaining unit.

Read literally and in isolation from the balance of the section, subsection (1) might be inter-

puted to require that the Board determine the precise number of persons in the unit on the application date and the precise number of those persons who were members of the applicant at the relevant time. However, the purpose of the directions in subsection (1) is made clear by subsections (2) and (3): the object is to determine only whether the number of members among bargaining unit employees exceeds one or other of the relevant percentages. From that perspective, it is apparent that a literal interpretation of subsection (1) could require the Board to determine questions of fact which are of no consequence to the outcome of the application, as where the only outstanding question is whether the number of members among twenty bargaining unit employees was ten or eleven at the relevant time. It should not be supposed that the Legislature intended that the final disposition of certification applications be delayed by litigation of issues whose resolution could in no event affect that disposition in any way. In our view, the obligation imposed on the Board by subsection 7(1) is discharged when the Board can say with certainty either that the percentage of members among bargaining unit employees is more than 55 per cent or that it is not less than 45 per cent and not more than 55 per cent. But for the provisions of subsection 6(2), however, the Board cannot resolve the questions posed by section 7 without first settling on a description of the appropriate bargaining unit.

9. Subsection 6(2) of the Act provides:

Where, upon an application for certification, the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect the trade union's right to certification, the Board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit.

It is important to note that this provision appears in section 6, which deals in the abstract with identification of the sort of employees who will be included in a bargaining unit, rather than in section 7, which deals with the identity and numbers of persons employed in a unit at a particular time. Subsection 6(2) is an exception to the requirement of subsection 6(1) that the definition of the appropriate bargaining unit be fully settled before an applicant can be given the right to act as exclusive bargaining agent for any employees of the respondent. A "dispute as to the composition of the bargaining unit", as those words are used in subsection 6(2), is a dispute over bargaining unit definition or description, a dispute over the sorts of employees who will fall within the bargaining unit, not a dispute over whether any particular individual is an employee of the requisite sort, nor a dispute whether a particular individual is an employee at all.

6. Section 126 and the relevant parts of section 127 provide as follows:

126.-(1) Upon an application for accreditation, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector, but the Board need not confine the unit to one geographic area or sector but may, if it considers it advisable, combine areas or sectors or both or parts thereof.

(2) The unit of employers shall comprise all employers as defined in clause 117(c) in the geographic area and sector determined by the Board to be appropriate.

\*\*\*\*\*

127.-(1) Upon an application for accreditation, the Board shall ascertain,

- (a) the number of employers in the unit of employers on the date of the making of the application who have within one year prior to such date had employees in their employ for whom the trade union or council of trade unions has bargaining rights in the geographic area and sector determined by the Board to be appropriate;
- (b) the number of employers in clause (a) represented by the employers' organization on the date of the making of the application; and
- (c) the number of employees of employers in clause (a) on the payroll of each such employer for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the Board, such payroll



period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.

(2) If the Board is satisfied,

- (a) that a majority of the employers in clause (1)(a) is represented by the employers' organization; and
- (b) that such majority of employers employed a majority of the employees in clause (1)(c),

the Board, subject to subsection (3), shall accredit the employers' organization as the bargaining agent of the employers in the unit of employers and for such other employers for whose employees the trade union or council of trade unions may, after the date of the making of the application, obtain bargaining rights through certification or voluntary recognition in the appropriate geographic area and sector.

7. The Board has defined the unit of employers which is appropriate for collective bargaining in each of the instant applications, pursuant to section 126 of the Act. They are described at paragraph 4 of the decision which issued November 3, 1989. The parties agreed and the Board was satisfied that those descriptions would not be affected by the resolution of the list issue about the two employers.

8. The Board's interpretation of subsections 7(1), (2) and (3) of the Act in *Robin Hood, supra*, recognizes that the Legislature requires the Board to engage in a sequence of arithmetic calculations in order to acquire jurisdiction to certify a trade union, but does not require the Board to engage in calculations the resolution of which would not affect, in any event, the Board's acquisition of jurisdiction. That was the practical result of the conclusion in *Robin Hood* that the Board had jurisdiction to certify the applicant once the Board had satisfied itself that, whether or not any, some or all of the five persons in question were among those employed in the unit, the result would not alter the trade union's entitlement to certification. While the double majority test which the Legislature adopted for the accreditation provisions of the Act creates obvious differences in the wording of subsection 127(1) and (2) compared with subsections 7(1), (2) and (3), they share a common purpose; that is, to set the tests by which the Board can decide whether a party seeking exclusive bargaining rights under the Act should acquire those rights. The differences in the wording of the subsections and the tests which they define, in the Board's view, are not differences which would prevent it from adopting the Board's legal analysis at paragraph 8 of *Robin Hood, supra*, and applying it to the interpretation of subsections 127(1) and (2) and the determination of the merits of the applications in Files No. 1533-88-R and 1535-88-R.

9. The Board was unable to ascertain in each of those applications the precise number of employers and employees required by clauses (a), (b) and (c) of subsection 127(1). It was able to ascertain, however, that the applicant would satisfy the double majority test of subsection 127(2) of the Act, whether or not either, neither or any one of Elirpa or Ontario Paving was on Final Schedule "E" for File No. 1533-88-R and whether or not Ontario Paving was on Final Schedule "E" for File No. 1535-88-R. Therefore, without resolving those issues, the Board was able to say with certainty that the applicant represented a majority of the employers in the relevant unit of employers on the date of making of the application, who within one year prior to that date had in their employ employees for whom the respondent trade union had the requisite bargaining rights, and who employed a majority of such employees in the payroll period prescribed by clause (c) of subsection 127(1). Accordingly, for the same reasons as given in *Robin Hood, supra*, the Board was satisfied that it had discharged its obligations under subsections 127(1) and (2) of the Act. The Board had previously found in an oral decision given August 9, 1989, that the applicant had met

the requirements of subsection 127(3) of the Act that it was a properly constituted employers' organization and that each of the employers whom it represents had vested it with the proper authority to discharge its bargaining obligations.

10. The Board found support also from the decision in *National Capital Roadbuilders Association*, [1988] OLRB Rep. Oct. 1041 for concluding in the instant applications that it had jurisdiction to accredit the applicant. In the *National Capital* decision, while the Board recognized that, as at the date of making of an application for accreditation, the unit of employers would consist of all employers for whose employees the respondent trade union had bargaining rights in the sector and geographic area by which the unit is described, it concluded that it had to identify with certainty only the individual employers whom the Board was required to "count" under subsection 127(1) of the Act for the purpose of calculating the double majority prescribed by subsection 127(2). They were the employers for whose employees the respondent trade union had bargaining rights in the relevant sector and geographic area who had employed such represented employees in the sector and geographic area within the year prior to the application date. The issue for the Board had been whether it must identify conclusively the individual employers who would not be counted under subsection 127(1) before it could acquire jurisdiction to accredit the applicant. It had been the Board's custom in applications for accreditation to identify those employers before settling the count. They were listed on a schedule referred to as Final Schedule "F" and, if a certificate of accreditation was issued, they were named in the accreditation order and in the certificate.

11. After discussing some of the consequences of a successful application for accreditation, reviewing in considerable detail the obligations placed by the Act and the Board's Rules of Procedure on the Board and all parties to an application for accreditation (see paragraphs 8 through 13), and interpreting subsections 127(1) and (2) of the Act in that context, the Board concluded at paragraph 23 "...that the Legislature did not intend the Board to decide conclusively who are the individual '...employers in the unit of employers...' before accrediting the applicant except insofar as it is necessary to do so in the process of the Board acquiring jurisdiction to accredit the applicant.". At paragraphs 24 through 26, the Board, by analogy, adopted the reasoning in *Robin Hood*, *supra*, and concluded that it need not conclusively identify each individual employer who would be in the unit of employers in order to acquire jurisdiction to accredit the applicant and that it should not delay the issuing of an accreditation certificate while it made that identification.

12. The practical result of that conclusion is the same as in *Robin Hood*. That is, the Legislature requires the Board to engage in a sequence of arithmetic calculations in order to acquire jurisdiction to accredit an employers' organization, but does not require the Board to engage in calculations the resolution of which would not affect, in any event, the Board's acquisition of jurisdiction under subsection 127(2) of the Act. In the Board's view, that principle had application to the issue herein even though Elirpa and Ontario Paving were employers who would affect the count of employers under subsection 127(1) of the Act. By the time the status of Elirpa and Ontario Paving was the only issue remaining which would affect the count of employers under clauses (a) and (b) of subsection 127(1) and the count of employees whom they employed during the payroll period prescribed in clause (c), none of the possible resolutions of the issue could affect the fact that the applicant had satisfied the double majority test of subsection 127(2) and was entitled to be accredited, as the Board has noted above at paragraph 9. Therefore, the final calculations respecting Elirpa and Ontario Paving were unnecessary to the Board's acquisition of jurisdiction under subsection 127(2). That made them calculations which the Board was not required by the Legislature to make.

13. These are the reasons why, in the November 3rd decision, the Board found it had juris-

diction to accredit the applicant in the two applications with outstanding list issues and, there being no other impediment to issuing accreditation certificates, that it should issue those certificates.

14. It is implicit in the Board's finding that it had jurisdiction to issue the certificates in those circumstances, that to proceed now and decide whether Ontario Paving Company Limited should be on Final Schedule "E" of File No. 1535-88-R and whether it and Elirpa Construction & Materials Ltd. should be on Final Schedule "E" of File No. 1533-88-R would be to decide an issue that need not be decided for the final disposition of the two applications. As the Board stated in paragraph 7 of its November 3rd decision, however, those employers, the applicant and respondents agreed that the Board should make a final determination of those issues. Having regard to the process adopted by the Board to determine the lists of employers in the three applications and because the two employers and two respondent trade unions wanted the determination made, the Board was disposed to proceed by the agreement of the parties. To that end, the Board served notice that it would receive the parties' evidence and representations on the issue at hearings scheduled previously for November 17th and December 15th. The parties resolved the issue at the hearings. They agreed that Elirpa should be included on Final Schedule "E" for File No. 1533-89-R and that Ontario Paving should not be included on that schedule or Final Schedule "E" for File No. 1535-88-R. Having regard to their agreement, the Board finds that Elirpa Construction & Materials Ltd. is to be included on Final Schedule "E" for File No. 1533-88-R and Ontario Paving Company Limited is not to be included on that schedule or on Final Schedule "E" for Board File No. 1535-88-R.

15. The Board has included Dawn Enterprises Ltd. on the Final Schedule "E" for File No. 1533-88-R. Dawn was represented by counsel at the hearing held on October 30, 1989, for the purpose of settling that schedule. Its name had been placed on the list of employers proposed by the applicant and the respondent trade union. In keeping with an earlier undertaking by the Board, that list had been served on the other parties together with the Board's notice of the hearing. When counsel queried at the hearing why Dawn was on the list, the Board produced to him the employer return which Dawn had filed. The return acknowledged that the respondent trade union was entitled to bargain for Dawn's employees in the sector and geographic area and that Dawn had employed such employees during the year preceding the making of the application. At that point, the question was withdrawn. Therefore, the Board declared Dawn Enterprises Ltd. to be an employer to be listed on Final Schedule "E" for File No. 1533-88-R.

16. Having regard to those findings, to the process adopted by the Board for dealing with lists of employers (described at paragraph 6 of the November 3rd decision) and on the basis of the employer returns, the evidence before the Board, the representations of the parties and the agreement of the applicant and respondents, the Board finds that the following employers listed on Final Schedule "E" set out below for each application to be those employers who had employees in the year immediately preceding the making of the application. There are a few instances where the result has been to list two employers as a single employer on Final Schedule "E". In doing so, that is not to say that they are to be treated as a single employer for other purposes of the Act.

File No. 1533-88-R

332573 Ontario Limited, c.o.b. as Comer Construction  
659928 Ontario Limited o/a VJR Contractors  
717401 Ontario Limited, c.o.b. as Stancon  
Advice Contracting Limited  
Alcan-Colony Contracting Co. Limited  
P. Aldo & Sons Construction Ltd./Blue Rose Construction Ltd.  
Alsi Contracting Ltd.  
Argo Sewer & Watermain Ltd.



Armagh Contractors Ltd.  
Armbro Materials & Construction Ltd.  
The Atlas Corporation  
Joe Baldesarra Construction Ltd.  
Bandiera & Associates Inc.  
Bar-Bro Construction Limited  
Bot Construction (Canada) Ltd./Clarkson Construction Limited  
Bradler Mechanical Limited  
Calder Hill Contracting Limited  
Canadrain Services Inc.  
Casimiri Brothers Contracting Ltd.  
C.D.C. Contracting A Division of Patron Contracting Limited  
Centreline Contracting Company Limited  
Chemello Contractors  
Clearway Construction Inc.  
Cliffside Utility Contractors Ltd.  
Cobra Drain & Developments Corp.  
Colosimo Contracting Limited  
Colvu Contracting Limited  
Con-Drain Company (1983) Limited  
Co-X-Co Construction Limited  
Craftwood Construction Company Limited  
Cucci Construction Limited  
D. I. Construction Co. Inc./Conro Leasing Limited  
Dalv Construction Ltd.  
D'Andrea Contracting Company Ltd.  
Dawn Enterprises Ltd.  
Dibco Underground Limited  
Dimarco Plumbing & Heating Co. Ltd.  
D'Orazio Drain & Watermain Co. Limited  
Draggon Contracting Ltd.  
Drainex Construction Ltd.  
Dranco Group Inc.  
Dufferin Construction Company, a division of St. Lawrence Cement Inc.  
Earth Boring Co. Limited  
Elirpa Construction & Materials Ltd.  
Elmford Construction Company Limited  
En-San Contractors Ltd.  
Environmental Technical Services Inc.  
Erosion Control Gabions Ltd.  
F.C.M. Construction Limited  
Fernview Construction Limited  
Fer-Pal Construction Ltd.  
The Foundation Company of Canada  
Ful-Con Constructors Inc.  
G.E.A.R. Contracting Inc.  
G. L. Trenching Ltd.  
Goldmar Contracting Ltd./Lacione Contracting Company Ltd.  
Harguy Construction (1968) Ltd.  
Hi-Road Earthmoving Inc.  
Hollingworth Construction Co.  
Hulst Town Contracting Ltd.  
Johnston Rock Boring Tunnel Systems Ltd.  
Keeway Construction Co. Ltd./Keeway Holdings Limited  
King Cross Contracting Limited  
Kleen-Way Construction Limited  
KVC Construction Ltd.  
Lamco Construction Limited  
Lednier Construction Co. Ltd.  
Limironi Inc.  
Lisanti Projects Limited

L.J.S. Construction Limited  
Lou Leclair Contracting Limited  
Lucy Construction Ltd.  
G. Macera Contracting Limited  
Jimmy Mack & Son Construction Ltd.  
JNO. Maguire Contracting Company Limited  
Maiella Contracting Sewers & Watermain Limited  
Mando Contracting Limited  
Marbel Construction Ltd.  
Marcott Tunnelling Inc.  
Mardave Construction Limited/Crisam Inc.  
Marlborough Construction Ltd.  
Matthews Contracting Inc.  
Midview Construction & Drain Ltd.  
C & M McNally Engineering Inc.  
S. McNally & Sons, Limited  
Niran Construction Limited  
Nor-Scott Construction Limited  
Oren Plumbing Inc.  
Pachino Construction Co. Ltd.  
Pelar Construction Ltd./York Excavating & Grading Co.  
Peran Tunnelling Ltd.  
Pilen Construction of Canada Limited  
Pisa Construction Company Limited  
Pit-On Construction Company Limited  
Pitts Engineering Construction, a division of Banister Continental Ltd.  
Poce Construction Limited  
Power Contracting Inc.  
Queen City Landscaping Ltd.  
Rabito Sewer and Watermain Contractors Limited  
Raken Contracting Limited  
Ron Robinson Limited  
George Robson Construction (Weston) Limited  
G.B. Romano Sons (Toronto) Limited  
Roseway Construction Limited  
Ross Drain Construction Co. Ltd.  
Rymall Construction Inc.  
Salvador Excavating Limited/Eclipse Excavating & Sales Ltd.  
Sam and Mark Construction Co. Ltd.  
The Smario Group/Mar-Tacc Ltd.  
Sansone Construction Company Limited  
E.R.P. Savini Construction Co. Ltd.  
Lou Savini Limited  
S.C.A.I. Construction Ltd.  
Sebco Contracting Ltd.  
Serrentino Equipment Ltd.  
Silvio Construction Co. Ltd.  
Sonterlan Construction Corp.  
Soren Construction Ltd.  
Starnino Construction Co. Ltd.  
Suppa Construction Limited  
Tacc Construction Co. Ltd.  
Targa Limited  
Temar Construction Ltd.  
Teston Pipelines Limited  
Thurock Construction Ltd.  
Topside Contracting Limited/Badner Engineering Limited  
Tri-D Concrete & Drain Ltd.  
UCL - Underground Construction Limited  
A. Valente Construction Co. Ltd.  
Valentine Underground Services Ltd.

VISP Construction Co. Ltd.  
Warden Construction Co. Limited  
Wardet Limited  
Wasero Construction Limited  
Westwood Drain Co. Limited  
George Wimpey Canada Limited  
York Construction & Drain Contractors Limited  
Zentil Plumbing & Heating Co.

File No. 1534-88-R

332573 Ontario Limited, c.o.b. as Comer Construction  
Curbside Construction Division of 694904 Ontario Inc.  
717401 Ontario Limited, c.o.b. as Stancon  
Advice Contracting Limited  
Alcan-Colony Contracting Co. Limited  
Alsi Contracting Ltd.  
Argo Sewer & Watermain Ltd.  
Armbro Materials & Construction Ltd.  
Bandiera & Associates Inc.  
Bar-Bro Construction Limited  
Bradler Mechanical Limited  
Calder Hill Contracting Limited  
Clearway Construction Inc.  
Cliffside Utility Contractors Ltd.  
Colvu Contracting Limited  
Con-Drain Company (1983) Limited  
Co-X-Co Construction Limited  
Craftwood Construction Company Limited  
Cucci Construction Limited  
D.I. Construction Co. Inc./Conro Leasing Limited  
Dalv Construction Ltd.  
D'Andrea Contracting Company Ltd.  
Dawn Enterprises Ltd.  
Dibco Underground Limited  
D'Orazio Drain & Watermain Co. Limited  
Draggon Contracting Ltd.  
Drainex Construction Ltd.  
Dranco Group Inc.  
Dufferin Construction Company, a division of St. Lawrence Cement Inc.  
Earth Boring Co. Limited  
Elmford Construction Company Limited  
En-San Contractors Ltd.  
Fernview Construction Limited  
The Foundation Company of Canada  
Ful-Con Constructors Inc.  
Harguy Construction (1968) Ltd.  
Hollingworth Construction Co.  
Keeway Construction Co. Ltd./Keeway Holdings Limited  
King Cross Contracting Limited  
Kleen-Way Construction Limited  
K.V.C. Construction Ltd.  
Lamco Construction Limited  
Lisanti Projects Limited  
L.J.S. Construction Limited  
Lou Leclair Contracting Limited  
G. Macera Contracting Limited  
JNO. Maguire Contracting Company Limited  
Mando Contracting Limited  
Marcott Tunnelling Inc.  
Marlborough Construction Ltd.



C & M McNally Engineering Inc.  
 S. McNally & Sons, Limited  
 Nor-Scott Construction Limited  
 Pachino Construction Co. Ltd.  
 Pelar Construction Ltd./York Excavating & Grading Co.  
 Peran Tunnelling Ltd.  
 Pilen Construction of Canada Limited  
 Pisa Construction Company Limited  
 Pitts Engineering Construction, a division of Banister Continental Ltd.  
 Poce Construction Limited  
 Power Contracting Inc.  
 Rabito Sewer and Watermain Contractors Limited  
 Riviera Sewer Forming Ltd.  
 George Robson Construction (Weston) Limited  
 G. C. Romano Sons (Toronto) Limited  
 Roseway Construction Limited  
 Rymall Construction Inc.  
 Salvador Excavating Limited/Eclipse Excavating & Sales Ltd.  
 Sansone Construction Company Limited  
 E.R.P. Savini Construction Co. Ltd.  
 Lou Savini Limited  
 Sebco Contracting Ltd.  
 Suppa Construction Limited  
 Tacc Construction Co. Ltd.  
 Teston Pipelines Limited  
 Thurock Construction Ltd.  
 Topsite Contracting Limited/Badner Engineering Limited  
 Valentine Underground Services Ltd.  
 Warden Construction Co. Limited  
 Wardet Limited  
 Wasero Construction Limited  
 Westwood Drain Co. Limited  
 George Wimpey Canada Limited

File No. 1535-88-R

332573 Ontario Limited, c.o.b. as Comer Construction  
 659928 Ontario Ltd. o.a. V.J.R. Contracting  
 717401 Ontario Limited, c.o.b. as Stancon  
 Aberdeen Highlands Construction Ltd.  
 Advice Contracting Limited  
 Alcan-Colony Contracting Co. Limited  
 Alsi Contracting Ltd.  
 Argo Sewer & Watermain Ltd.  
 Armagh Contracting Ltd.  
 Ambro Materials & Construction Ltd.  
 The Atlas Corporation  
 Joe Baldessara Construction  
 Bandiera & Associates Inc.  
 Bar-Bro Construction Limited  
 G. Bellisario Carpenters  
 Bot Construction (Canada) Ltd./Clarkson  
 Construction Limited  
 Bradler Mechanical Ltd.  
 Calder Hill Contracting Limited  
 Canadrain Services Inc.  
 Casimiri Bros. Contractors Ltd.  
 C.D.C. Contracting A Division of Patron Contracting Limited  
 Clearway Construction Inc.  
 Cliffside Utility Contractors Ltd.  
 Clipper Construction Ltd./Coreydale Contracting Co.

Colavita Construction Co. Ltd.  
Colosimo Contracting Limited  
Colvu Contracting Limited  
Con-Drain Company (1983) Limited  
Co-X-Co Construction Limited  
Craftwood Construction Company Limited  
Cucci Construction Limited  
D. I. Construction Co. Inc./Conro Leasing Limited  
Dalv Construction Ltd.  
D'Andrea Contracting Company Ltd.  
Dawn Enterprises Ltd.  
Dibco Underground Limited  
D'Orazio Drain & Watermain Co. Limited  
Draggon Contracting Ltd.  
Drainex Construction Ltd.  
Dranco Group Inc.  
Dufferin Construction Company, a division of St. Lawrence Cement Inc.  
Duntri Construction  
Earth Boring Co. Limited  
Elmford Construction Company Limited  
En-San Contractors Ltd.  
F.C.M. Construction Limited  
Fernview Construction Limited  
The Foundation Company of Canada  
Ful-Con Constructors Inc.  
Gem Contracting (Darwin Jones)  
G. L. Trenching Ltd.  
Goldmar Contracting Ltd./Lancione Contracting Company Ltd.  
Grammi Construction Co. Ltd.  
Harguy Construction (1968) Ltd.  
Hollingworth Construction Co.  
Keeway Construction Co. Ltd./Keeway Holdings Limited  
King Cross Contracting Limited  
Kleen-Way Construction Limited  
K.V.C. Construction Ltd.  
Lamco Construction Limited  
Lisanti Projects Limited  
L.J.S. Construction Limited  
Lou Leclair Contracting Limited  
G. Macera Contracting Limited  
Jimmy Mack & Son Construction Ltd.  
JNO. Maguire Contracting Company Limited  
McLeod Engineering Inc.  
Maiella Contracting Sewers & Watermain Limited  
Mando Contracting Limited  
Marbel Construction Ltd.  
Marcott Tunnelling Inc.  
Mardave Construction Ltd./Crisam Inc.  
Marlborough Construction Ltd.  
C & M McNally Engineering Inc.  
S. McNally & Sons, Limited  
Memme Excavating Co. Ltd.  
Niran Construction Limited  
Nor-Scott Construction Limited  
Pachino Construction Co. Ltd.  
Pelar Construction Ltd./York Excavating & Grading Co.  
Peran Tunnelling Ltd.  
Pilen Construction of Canada Limited  
Pisa Construction Company Limited  
Pit-On Construction Company Limited  
Pitts Engineering Construction, a division of Banister Continental Ltd.

Poce Construction Limited  
 Power Contracting Inc.  
 Rabito Sewer and Watermain Contractors Limited  
 Raken Contracting Limited  
 D. W. Rankin Limited  
 George Robson Construction (Weston) Limited  
 Rockville Construction Ltd.  
 Roma Excavating & Grading Ltd.  
 G. C. Romano Sons (Toronto) Limited  
 Roseway Construction Limited  
 Ross Drain Construction Co. Ltd.  
 Rymall Construction Inc.  
 Salvador Excavating Limited/Eclipse Excavating & Sales Ltd.  
 Sam and Mark Construction Ltd.  
 The Samario Group/Mar-Tacc Ltd.  
 Sansone Construction Company Limited  
 Sebco Contracting Ltd.  
 Silvio Construction Co. Ltd.  
 Stella Sewer and Watermain Forming  
 E.R.P. Savini Construction Co. Ltd.  
 Lou Savini Limited  
 Subgrade Construction Co. Inc.  
 Suppa Construction Limited  
 Tacc Construction Co. Ltd.  
 Targa Limited  
 Teston Pipelines Limited  
 Thrurock Construction Ltd.  
 Topsite Contracting Limited/Badner Engineering Limited  
 UCL - Underground Construction Limited  
 A. Valente Construction Co. Ltd.  
 Valentine Underground Services Ltd.  
 Visp Construction Co.  
 Warden Construction Co. Limited  
 Wardet Limited  
 Wasero Construction Limited  
 Westwood Drain Co. Limited  
 George Wimpey Canada Limited

17. While the Board was able to satisfy itself in each application that the applicant had satisfied the double majority requirements of subsections 127(1) and (2) of the Act in spite of the outstanding issue of the two employers, the Board did not set out in its November 3rd decision its detailed findings under those subsections because it had agreed to make final determinations respecting the two employers. Since those issues have been finally determined, the Board will set out those findings now. On the basis of the evidence before it, the representations of the parties and the agreement of the applicant and the respondents, the Board makes the following findings in each application with respect to the double majority requirements of subsection 127(1) and (2) of the Act.

File No. 1533-88-R

The 138 employers listed on Final Schedule "E" for this application are those employers who had employees in the year immediately preceding September 26, 1988, the date of the making of the application, and 138 is the number of employers to be ascertained by the Board under subsection 127(1)(a) of the *Labour Relations Act*. The Board further finds that, on the date of making of the application, the applicant represented 74 of the 138 employers on Final Schedule "E" and 74 is the number of employers to be ascertained by the Board under subsection 127(1)(b) of the *Labour Relations Act*. Accordingly, the Board is satisfied that the majority of the employers in the unit of employers described at paragraph 4 of the decision which issued November 7, 1989 is represented by the applicant. The Board finds further that there were 920 employees affected



by this application employed during the payroll period immediately preceding September 26, 1988 by the 138 employers on Final Schedule "E" and 920 is the number of employees to be ascertained by the Board under subsection 127(1)(c) of the *Labour Relations Act*. The Board further finds that the 74 employers represented by the applicant employed 677 of the 920 employees. Therefore, the Board is satisfied that the majority of the employers in the unit of employers represented by the applicant employed a majority of the employees affected by this application ascertained in accordance with the provisions of subsection 127(1)(c) of the *Labour Relations Act*.

File No. 1534-88-R

The 83 employers listed on Final Schedule "E" for this application are those employers who had employees in the year immediately preceding September 26, 1988, the date of the making of the application, and 83 is the number of employers to be ascertained by the Board under subsection 127(1)(a) of the *Labour Relations Act*. The Board further finds that, on the date of making of the application, the applicant represented 74 of the 83 employers on Final Schedule "E" and 74 is the number of employers to be ascertained by the Board under subsection 127(1)(b) of the *Labour Relations Act*. Accordingly, the Board is satisfied that the majority of the employers in the unit of employers described at paragraph 4 of the decision which issued November 7, 1989 is represented by the applicant. The Board finds further that there were 55 employees affected by this application employed during the payroll period immediately preceding September 26, 1988 by the 83 employers on Final Schedule "E" and 55 is the number of employees to be ascertained by the Board under subsection 127(1)(c) of the *Labour Relations Act*. The Board further finds that the 74 employers represented by the applicant employed 43 of the 55 employees. Therefore, the Board is satisfied that the majority of the employers in the unit of employers represented by the applicant employed a majority of the employees affected by this application ascertained in accordance with the provisions of subsection 127(1)(c) of the *Labour Relations Act*.

File No. 1535-88-R

The 122 employers listed on Final Schedule "E" for this application are those employers who had employees in the year immediately preceding September 26, 1988, the date of the making of the application, and 122 is the number of employers to be ascertained by the Board under subsection 127(1)(a) of the *Labour Relations Act*. The Board further finds that, on the date of the making of the application, the applicant represented 74 of the 122 employers on Final Schedule "E" and 74 is the number of employers to be ascertained by the Board under subsection 127(1)(b) of the *Labour Relations Act*. Accordingly, the Board is satisfied that the majority of the employers in the unit of employers described at paragraph 4 of the decision which issued November 7, 1989 is represented by the applicant. The Board finds further that there were 1,290 employees affected by this application employed during the payroll period immediately preceding September 26, 1988 by the employers on Final Schedule "E" above and 1,290 is the number of employees to be ascertained by the Board under subsection 127(1)(c) of the *Labour Relations Act*. The Board further finds that the 74 employers represented by the applicant employed 1,058 of the 1,290 employees. Therefore, the Board is satisfied that the majority of the employers in the unit of employers represented by the applicant employed a majority of the employees affected by this application ascertained in accordance with the provisions of subsection 127(1)(c) of the *Labour Relations Act*.

18. At the hearing on November 17th, applicant counsel expressed concern about a potential ambiguity in the wording of each accreditation order issued to it. The potential ambiguity arises out of the reference at the end of the order to its binding effect on any employer for whose employees the respondent trade union obtains the requisite bargaining rights after the date of making of the application. The potential ambiguity carries through to the certificates which were issued to the applicant. In addition, counsel for the International Union of Operating Engineers, Local 793 identified an error in the wording of clause (i) of Part "B" of the description of the unit of employers for File No. 1533-88-R at paragraph 4 of the November 3rd decision. The error was carried through the accreditation order at paragraph 9 and the certificate of accreditation issued to the applicant. The Board served notice on those parties who had been participating in the proceedings at the time of the November 3rd decision that the Board would deal with both matters at a hearing

on December 15, 1989. The Board's notice contained proposed amendments to the accreditation orders and certificates and invited the parties' submissions thereon. The parties who appeared at the hearing on December 15th endorsed the amendments proposed by the Board.

19. Accordingly, the Board will reconsider and vary as follows the decision which issued November 3, 1989. At paragraph 4 of the decision, the description of the unit of employers in File No. 1533-88-R found to be appropriate for collective bargaining is amended by replacing the wording at clause (i) of Part "B" by the following:

- (i) Schedule "A" to the Operating Engineers Provincial Agreement being the schedule between the Crane Rental Association of Ontario and the Ottawa Crane Rental Association and the International Union of Operating Engineers, Local 793.

Paragraph 9 of the decision is deleted and replaced with the following:

9. Therefore, the following certificates will issue:

File No. 1533-88-R

A certificate of accreditation will issue to the Metropolitan Toronto Sewer and Watermain Contractors Association for all employers of employees engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repair and maintenance of same, for whom the International Union of Operating Engineers, Local 793 has bargaining rights as at September 26, 1988 and, in accordance with the provisions of subsection 127(2) of the *Labour Relations Act*, for such other employers for whose employees the International Union of Operating Engineers, Local 793 may, after September 26, 1988, obtain bargaining rights through certification or voluntary recognition in the sector and geographic area hereinafter described, performing all sewer and/or watermain work including drainage in the sewers and watermain sector of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the Towns of Ajax and Pickering in the Regional Municipality of Durham, and Simcoe County, save and except:

- A. all such work on private property, inclusive of public housing or Crown corporations, both inside and outside any buildings or structures, regardless of the end use of the private property, save such work on private property:
  - (i) ultimately assumed as an easement, right-of-way or road allowance, by federal, provincial or municipal government or any other governmental authority having jurisdiction, or
  - (ii) outside of buildings or structures on all private property sites greater than three (3) hectares in size other than residential end use private property sites, or
  - (iii) on an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than three (3) hectares in size; or
- B. notwithstanding the generality of the foregoing, the aforementioned bargaining unit description is subject to the following exclusions from the bargaining unit of employers performing work under the following collective agreements or schedules in accordance with past or existing practices as at the date hereof:
  - (i) Schedule "A" to the Operating Engineers Provincial Agreement being the schedule between the Crane Rental Association of Ontario and the Ottawa Crane Rental Association and the International Union of Operating Engineers, Local 793;

- (ii) Schedule "B" to the Operating Engineers Provincial Agreement being the schedule between the Ontario Association of Foundation Specialists and the International Union of Operating Engineers, Local 793;
- (iii) Schedule "C" to the Operating Engineers Provincial Agreement being the schedule between the Ontario Erectors Association and the International Union of Operating Engineers, Local 793;
- (iv) Schedule "D" to the Operating Engineers Provincial Agreement being the schedule between the Toronto and District Excavators Association and the International Union of Operating Engineers, Local 793;
- (v) The International Union of Operating Engineers, Local 793 and the Metropolitan Toronto Road Builders Association;
- (vi) The Operating Engineers, Local 793 and the Utility Contractors Association of Ontario;
- (vii) The Ontario Allied Construction Trades Council and the Electrical Power Systems Construction Association;
- (viii) The Operating Engineers Mainline Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and International Union of Operating Engineers; and
- (ix) The Operating Engineers Distribution Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and International Union of Operating Engineers.

For the purpose of clarity, the Board declares that the unit of employers has been described to reflect work performed by employers of employees for whom the International Union of Operating Engineers, Local 793 has bargaining rights and shall not be construed as defining or limiting any sector in the construction industry.

File No. 1534-88-R

A certificate of accreditation will issue to the Metropolitan Toronto Sewer and Watermain Contractors Association for all employers of truck drivers, for whom the Teamsters' Local Union 230 has bargaining rights as at September 26, 1988 and, in accordance with the provisions of subsection 127(2) of the *Labour Relations Act*, for such other employers for whose employees Teamsters' Local Union 230 may, after September 26, 1988, obtain bargaining rights through certification or voluntary recognition in the sector and geographic area hereinafter described, performing all sewer and/or watermain work including drainage in the sewers and watermain sector of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the Towns of Ajax and Pickering in the Regional Municipality of Durham, and Simcoe County, save and except:

- A. all such work on private property, inclusive of public housing or Crown corporations, both inside and outside any buildings or structures, regardless of the end use of the private property, save such work on private property:
  - (i) ultimately assumed as an easement, right-of-way or road allowance, by federal, provincial or municipal government or any other governmental authority having jurisdiction, or
  - (ii) outside of buildings or structures on all private property sites greater than three (3) hectares in size other than residential end use private property sites, or



- (iii) on an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than three (3) hectares in size; or
- B. notwithstanding the generality of the foregoing, the aforementioned bargaining unit description is subject to the following exclusions from the bargaining unit of employers performing work under the following collective agreements in accordance with past or existing practices as at the date hereof:
  - (i) Teamsters' Local Union 230 and various hauler employers;
  - (ii) Labourers International Union of North America, Local 183 and Teamsters' Local Union 230 and the Metropolitan Toronto Road Builders Association;
  - (iii) The Ontario Allied Construction Trades Council and The Electrical Power Systems Construction Association;
  - (iv) The Toronto and District Excavators Association and Teamsters' Local Union 230;
  - (v) The Teamsters Mainline Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and the International Brotherhood of Teamsters; and
  - (vi) The Teamsters Distribution Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and the International Brotherhood of Teamsters.

For the purpose of clarity, the Board declares that the unit of employers has been described to reflect work performed by employers of employees for whom Teamsters' Local Union 230 has bargaining rights and shall not be construed as defining or limiting any sector in the construction industry.

File No. 1535-88-R

A certificate of accreditation will issue to the Metropolitan Toronto Sewer and Watermain Contractors Association for all employers of construction labourers for whom the Labourers' International Union of North America, Local 183 has bargaining rights as at September 26, 1988 and, in accordance with the provisions of subsection 127(2) of the *Labour Relations Act*, for such other employers for whose employees the Labourers International Union of North America, Local 183 may, after September 26, 1988, obtain bargaining rights through certification or voluntary recognition in the sector and geographic area hereinafter described, performing all sewer and/or watermain work including drainage in the sewers and watermains sector of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the Towns of Ajax and Pickering in the Regional Municipality of Durham, and Simcoe County, save and except:

- A. all such work on private property, inclusive of public housing or Crown corporations, both inside and outside any buildings or structures, regardless of the end use of the private property, save such work on private property:
  - (i) ultimately assumed as an easement, right-of-way or road allowance, by federal, provincial or municipal government or any other governmental authority having jurisdiction, or
  - (ii) outside of buildings or structures on all private property sites greater than three (3) hectares in size other than residential end use private property sites, or

- (iii) on an easement, right-of-way, private roadway or road allowance on residential end use private property sites greater than three (3) hectares in size; or
- B. notwithstanding the generality of the foregoing, the aforementioned bargaining unit description is subject to the following exclusions from the bargaining unit of employers performing work under the following collective agreements in accordance with past or existing practices as at the date hereof:
  - (i) Labourers' Ontario Provincial District Council and Utility Contractors Association of Ontario;
  - (ii) Labourers' Ontario Provincial District Council and Ontario Precast Manufacturers Association;
  - (iii) Labourers' International Union of North America, Local 183 and Heavy Construction Association of Toronto;
  - (iv) Labourers' International Union of North America, Local 183 and Teamsters' Local Union 230 and Metropolitan Toronto Road Builders' Association;
  - (v) Ontario Allied Construction Trades Council and Electrical Power Systems Construction Association;
  - (vi) Labourers Mainline Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and Labourers International Union of North America; and
  - (vii) Labourers Distribution Pipeline Agreement for Canada between Pipe Line Contractors Association of Canada and Labourers International Union of North America.

For the purpose of clarity, the Board declares that the unit of employers has been described to reflect work performed by employers of employees for whom the Labourers International Union of North America, Local 183 has bargaining rights and shall not be construed as defining or limiting any sector in the construction industry.

20. As a consequence of the Board varying the accreditation orders issued November 3, 1989, it will be necessary to vary the certificates of accreditation. Each certificate of accreditation issued to the applicant and the copy issued to the respondent trade unions have been returned to the Board. Therefore, the Registrar is directed to replace the surrendered certificates with certificates dated November 3, 1989 pursuant to the accreditation order set out above in amended paragraph 9 of the November 3rd decision.

21. There remains only for the Board to issue its reasons for finding in an earlier decision that it need not and should not conclusively identify for each application each individual employer for whose employees the respondent trade union had bargaining rights in the sector and geographic area by which the unit of employers is described as at September 26, 1988, the date of the making of the application, but who had not employed such employees within one year prior to that date.

#### APPENDIX "A"

KPM Kindustries Ltd. c.o.b. King Paving & Materials Company  
 Robert S. Gordon Construction (1985) Limited  
 Warren Bitulithic Limited  
 Ontario Paving Company Limited

Ferpac Paving Inc.  
Towland (London) 1970 Ltd.  
Seal-Top Paving & Construction Ltd.  
McKay Excavating Limited  
Franki Canada Limited  
Prime Asphalt Paving Company  
Sentinel Paving & Construction Ltd.  
Aveiro Construction Limited  
Fiberglas Canada Inc.  
Dow Chemical Canada Inc.  
Armbro Materials & Construction Ltd.  
Bot Construction Limited  
Clarkson Construction Company Ltd.  
Con-Eng Contractors Limited  
Elirpa Construction & Materials Limited  
Toronto Zenith Contracting (1982) Limited  
Crestile Inc.  
590308 Ontario Inc. c.o.b. Advance Excavating  
Bennett Paving & Materials Ltd.  
St. Marys Cement Corp. c.o.b. Canada Building Materials  
Inscan-Dewar (a Joint Venture)  
Fermar Paving Limited  
Ron Robinson Limited  
Prime Paving Limited  
Industrial Concrete Forming Division of Tru-Wall Group Limited  
A.S. Rule (1975) Limited (TCA file)  
Law Crushed Stone, Division of Hard Rock Paving Co. Ltd.  
Folco Construction Equipment Ltd.  
Karvon Construction Limited  
Dewar Insulations Inc.  
Dellbrook Homes  
Havendale Homes  
Greenspoon Brothers Limited  
Intrusion Prepakt Limited  
Rideau Valley Contractors Ltd.  
W.A. Stephenson Construction (International) Limited  
Tornat Construction Inc.  
Condiversal Limited  
Wycliffe Management Services Inc.  
Underground Services (1983) Limited  
Graff Diamond Products Limited  
Pigott Construction Limited  
Huron Construction

---



**0503-89-U Maria Mlakar, Complainant v. CUPE Local 79, Respondent v. The Municipality of Metropolitan Toronto, Intervener**

**Duty of Fair Representation - Unfair Labour Practice - Complainant winning promotion competition - Union supporting grievance of unsuccessful candidate - Complainant alleging union breached duty by failing to represent her at arbitration - Board reviewing content of duty - Where union properly supports interest of one bargaining unit member consistent with proper application and administration of collective agreement, union not also required to represent opposing interest - Union not guarantor of every aggrieved employee - Complaint dismissed**

**BEFORE:** *M. A. Nairn*, Vice-Chair.

**APPEARANCES:** *David Zimmer* for the complainant; *Douglas J. Wray* and *Linda Jewitt* for the respondent; *Robert Avinoam* and *Mike Moffat* for the intervener.

**DECISION OF THE BOARD;** November 27, 1989

1. This is a section 89 complaint alleging that the respondent union violated section 68 of the *Labour Relations Act*. After hearing the evidence and submissions of the parties I advised them that I was dismissing the complaint with reasons to follow. I now provide those reasons.

2. Section 68 of the Act provides as follows:

68. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

3. The intervener employer ("Metro") conducted a job promotion competition. The complainant was the successful candidate in that competition. A Ms. Fekete was the unsuccessful candidate. Both employees are members of the bargaining unit represented by the respondent. Ms. Fekete filed a grievance alleging that Metro had violated the collective agreement in awarding the job to the complainant. The respondent union chose to proceed to arbitration with Ms. Fekete's grievance. The first day of the arbitration hearing was held on March 20, 1989. This complaint was filed on May 23, 1989. Further days have been scheduled for the continuation of the arbitration hearing.

4. In her complaint the complainant alleges that the union violated section 68 of the Act by failing to represent her at the arbitration hearing of Ms. Fekete's grievance. As a remedy, the complainant requests that the union be required to provide her with counsel at the continuation of the arbitration. Ms. Mlakar also alleges that she was informed by the union that they usually lose promotion cases at arbitration and therefore she had no reason to worry about its outcome having any effect on her.

5. At the outset of the hearing counsel for the complainant sought leave of the Board to amend the complaint to request that the union be required to withdraw Ms. Fekete's grievance. Inherent in that request was the unparticularized allegation that the union's decision to refer Ms. Fekete's grievance to arbitration was improper. It was common ground among the parties that if the amendment were allowed, an adjournment would be required. I denied the request to amend the complaint in that it raised a completely new matter. It would be inappropriate to occasion the delay and consequent prejudice to the other parties in having this complaint dealt with.

6. The facts leading up to this complaint are, with certain exceptions, fairly straightforward. The complainant has been employed by Metro since 1979. During that time she has progressed from a clerk grade five position to a point at the time of this complaint where she was working as a clerk grade one. In August 1987, a job call was posted for a clerk grade one position and the complainant (at that time a clerk grade two) applied. However she was not the successful applicant based on the fact that she did not yet have the required two years of experience as a clerk grade two. The complainant filed a grievance in September, 1987 challenging that decision of Metro. In the course of pursuing that grievance she dealt with Ms. Linda Jewitt, a national representative of the union assigned the responsibility of servicing the bargaining unit of which the complainant is a member. In February, 1988 the union decided that it would not pursue that grievance to arbitration. The complainant was so advised and was advised of her right to appeal that union decision. No appeal was made and that grievance proceeded no further.

7. Subsequently, in February 1988 another job call for a clerk grade one was posted and the complainant again applied. Her application was again initially unsuccessful based on her lack of the required length of experience. However, the complainant approached her union steward, Mr. F. Spratt and he contacted Metro. The ensuing result was that the complainant was able to satisfy Metro that she had sufficient hours of equivalent experience to warrant her continued consideration in the job competition. The next step of that process was an oral examination. The complainant and one other individual, a Ms. Fekete were the only remaining candidates for the position at this stage. Following the oral exam Ms. Fekete was disqualified as a candidate as she did not score a high enough mark in order to continue and the job was awarded to the complainant.

8. Unknown to the complainant at that time, Ms. Fekete wished to pursue a grievance with respect to Metro's decision. Under the terms of the collective agreement, promotion grievances commence at Step 2 of the grievance procedure. It is the usual practice of the union for the national representative responsible for the local to be involved at that stage. Ms. Jewitt participated in the grievance procedure on behalf of Ms. Fekete. The decision whether or not to refer the grievance to arbitration is taken not by the national representative, however, but by the union's grievance committee. It is comprised of the union's Second Vice-President and six unit officers all of which are elected positions. This committee meets regularly. The national representative concerned will prepare the information they have obtained concerning the grievance for the committee's review. This will include the grievance itself, any response to it from the employer and its reasons for denying the grievance, information gleaned from the grievor and others involved, and the reasons why the grievor wishes to continue to arbitration. The representative will also as a rule provide an opinion as to the likelihood of success or failure at arbitration and something of the personal impact of the grievance on the grievor.

9. In this particular case, the information that Ms. Jewitt provided to the grievance committee included the facts (acknowledged by the complainant) that Ms. Fekete had nine years more seniority than the complainant, that she had worked as a clerk grade two since approximately 1974 and that she had been performing the duties of a clerk grade one on a temporary basis to the satisfaction of the employer. In addition, the union had been approached by another employee who was prepared to provide evidence, based on a conversation she had had with a member of the board conducting the job competition, that the examination process had been conducted improperly.

10. As a result of the grievance committee's decision to refer the grievance to arbitration, Ms. Jewitt then undertook the necessary steps to notify the employer and convene a board of arbitration. A hearing was scheduled for March 20, 1989. On February 14, 1989, the complainant received a letter from the employer notifying her of the arbitration hearing, that her position as

incumbent may be affected depending on the outcome of the arbitration, and advising her that she had the right to attend at the hearing and make representations either on her own behalf or with the assistance of counsel. On March 1, 1989 the complainant contacted Ms. Jewitt. This complaint rests essentially on what is alleged to have been communicated during that conversation and thereafter.

11. The complainant states that the union violated section 68 by firstly, refusing to represent her at the hearing of Ms. Fekete's grievance. Secondly, the complainant alleges that because of certain things that were told to her by Ms. Jewitt she was lulled into a false sense of security regarding her own role and responsibility in the arbitration proceedings. The complainant did attend the first day of hearing of the arbitration. It has not been completed and more days have been scheduled. The complainant seeks as a remedy that the union provide her with representation at the continuation of that hearing.

12. With respect to the allegation that the union failed to represent the complainant at the hearing of Ms. Fekete's grievance the following is clear. Unions are often placed in the position of having to deal with competing rights and interests as between individual members of the bargaining unit for which they hold bargaining rights. Invariably there are situations where there is "discrimination" as between individuals. For example, one is discriminating in conferring a preference to one employee over another based on seniority. It is discriminatory to confer a preference to a better qualified employee over another. However, that "discrimination" is, in and of itself, in no way improper. Choices as between individuals must be made. What gives rise to concern is where that choice is made based on arbitrary or other improper considerations. This Board has said on many occasions that making those difficult decisions is very much a part of the responsibility which a union bears in the representation of employees. The Board discussed the duty imposed by section 68 of the Act in *The Municipality of Metropolitan Toronto*, [1978] OLRB Rep. Feb. 143, at paragraph 18 as follows:

Over the years many aspects of the duty of fair representation have settled into place. The Board has repeatedly held that in order not to act in an arbitrary manner in the processing of a grievance, the union must direct its mind to the merits of the grievance and act on the available evidence. While the effective operation of the grievance machinery requires that unions also be allowed to consider factors beyond the merits of a particular grievance in deciding whether to process a grievance on to arbitration, considerations of this nature must have their roots in the welfare of the bargaining unit and the bargaining process and must not be based on irrelevant facts or principles. Additionally, a union is prohibited from processing a grievance in bad faith. An employee must not become the victim of the union's ill will such that a dislike for an individual dictates the path of the grievance rather than the merits of the grievance or legitimate concerns for the welfare of the bargaining unit and bargaining process. The prohibition against a union acting in a manner that is discriminatory functions to prevent a union from distinguishing among members in the bargaining unit unless there are good reasons for so doing. To avoid acting in a manner that is discriminatory, the duty requires, in general, that like situations be treated in a like manner and that neither particular favour nor disfavour befall any individual part from the others unless justified by the circumstances. The duty does not make the union the guarantor for every aggrieved employee. Instead, the duty requires that the union consider the position of all of its members and that it weigh the competing interests of minorities or individuals in arriving at its decisions.

Counsel for the complainant in this case asked the Board to apply those principles discussed in Brown, R., "*The 'Arbitrary', 'Discriminatory' and 'Bad Faith' Tests Under the Duty of Fair Representation in Ontario*", September 1982 Canadian Bar Review, page 412. Reference in that article to earlier Board decisions include examples where the union has been required to make precisely this kind of choice as between individuals' competing interests (see pages 424-26).

13. The grievance committee reviewed the information received from Ms. Jewitt and



decided to refer Ms. Fekete's grievance to arbitration. Ms. Jewitt testified that the union as a general matter has a strong interest in protecting seniority rights and ensuring that a senior employee has a fair opportunity for promotion. In fact the collective agreement gives some recognition to seniority for promotion purposes at Article 16.04(c) and Article 16.04(a) provides that where examinations are required, they are to be conducted in a manner that will provide fair evaluations based on the same set of standards. The union is entitled to challenge those decisions of management which it feels violate the collective agreement. Failing to do so would obviously run the risk of being accused of failing to represent the members of the bargaining unit. Having undertaken to refer this grievance to arbitration the union must represent Ms. Fekete's interest. The complainant would have the union represent her competing interest as well. Inherent in that is the requirement that the union take inconsistent positions at the arbitration and argue against itself. The nature of the proceeding is such that it is the decision of management that is being challenged. Obviously the complainant may be affected. But section 68 does not make a union the guarantor for every aggrieved employee nor does it require the union, having made its decision as between competing interests, to support both. It properly supports the interest that it feels is consistent with the proper application and/or administration of the collective agreement. The complainant was advised by Ms. Jewitt that the union would not represent her at the arbitration nor would it provide her with counsel. In so doing, the union did not violate section 68 of the Act.

14. The second element of the complaint alleges that by virtue of being told that the union "always loses these cases" so she needn't worry, the complainant was lulled into a false sense of security. At the hearing this was expanded to include an allegation that the union was "wishy-washy" and had suggested to the complainant that her interests were being protected by the employer. Even assuming that these allegations could found a violation of section 68, having reviewed the evidence of both the complainant and the union, on balance, the evidence of the union is more consistent with what is reasonable and probable in the circumstances. It was also more complete.

15. The complainant testified she called Ms. Jewitt on the first Friday following receipt of the February 14, 1989 letter. In cross-examination she acknowledged that it was likely that the conversation had not taken place until Wednesday, March 1st, 1989 as evidenced by a phone message to Ms. Jewitt. When asked in examination-in-chief how she knew to call Ms. Jewitt, the complainant responded "her name was known". In cross-examination it became apparent that the complainant had had dealings with and already knew Ms. Jewitt as a result of her earlier grievance. In chief the complainant testified that between the March 1, 1989 conversation and the March 20, 1989 arbitration date, she had no further conversations with anyone from the union. Yet in cross-examination she acknowledged that she had called the CUPE Ontario office and had spoken with someone there. She testified she couldn't remember whether it was before or after March 20. Ms. Jewitt testified on behalf of the union that on March 15, 1989 she had received a call from Mr. Kent Mitchell, the Assistant Regional Director of the national union, advising her that he had received a call from Ms. Mlakar and that she was upset because the union was not going to provide a lawyer for her at the arbitration. Although in cross-examination the complainant denied she was making a complaint to the CUPE Ontario office but had called to ask questions of them, she was unable to recall the nature of those questions.

16. Finally, apart from asserting that Ms. Jewitt had said to her on March 1, 1989 that the union never really wins these cases and therefore she should sit back and listen, the complainant was unable to recall any other aspect of the conversation. Nor was she prompted to ask why the union might be proceeding with a grievance they felt they were going to lose. In cross-examination however, she acknowledged that she had been advised by Ms. Jewitt on March 1, 1989 that the union had made a decision to proceed with Ms. Fekete's grievance, that Ms. Jewitt had explained

that Metro would be taking the position that it had been correct in promoting her to the position in question, and that because of the conflict inherent in arguing two contradictory positions the union would not provide her with a lawyer or otherwise represent her at the hearing. Ms. Jewitt denied making those statements attributed to her by the complainant. She testified that the union does in fact win a number of its job posting grievances, and that she can never guarantee the result of a particular arbitration to anyone.

17. There is no doubt that the complainant was upset by the turn of events surrounding her promotion and that she received little or no comfort from the information she received from the union. She testified that she understood that the union wouldn't want to pay for two lawyers to argue amongst themselves but felt that "there was also my side - when you pay dues you expect the union does represent you". It may well be that in the result, the complainant either misunderstood or was unwilling to accept the information she was receiving.

18. Counsel for the complainant argued that the union had added to the complainant's confusion and had acted inappropriately by not providing the complainant with the notice and information contained in the employer's letter of February 14, 1989. The requirement of notice to an incumbent on a job posting grievance in the arbitral jurisprudence has developed from the decision in *Re Hoogendoorn and Greening Metal Products Screening Equipment Co. et al*, [1968] S.C.R. 30. The concern is that an incumbent employee be made aware of the fact that her position may be in jeopardy depending on the outcome of the arbitration and her consequent right to participate in the arbitration. There is no requirement that such notice come from the union. It is simply that notice must be given. Ms. Jewitt testified that the union's practice was to rely on the employer to provide notice to affected employees. Because of the large number of employees in the bargaining unit and the amount of movement between jobs, it is the employer who has more complete information with respect to who may be affected by a particular job posting grievance. Both the union and the employer are aware that absent notice to affected employees the arbitration hearing will not proceed but will be adjourned in order that notice be given. It is in both their interests that notice be provided in order to avoid the delay and expense arising from such an adjournment. The union and employer here have worked out an arrangement that seeks to ensure that proper notice will be given to all those entitled to it. The union cannot be faulted for that.

19. For those reasons, I dismissed the complaint.

---

## 2014-88-G United Brotherhood of Carpenters and Joiners of America, Local 27, Applicant v. Real Carpenters, Respondent

**Practice and Procedure - Witness - Board requiring correct name and address for arrest warrant - Party calling witness responsible for providing Board with correct name and address for arrest warrant**

**BEFORE:** R. A. Furness, Vice-Chair, and Board Members D. A. MacDonald and J. Redshaw.

**DECISION OF THE BOARD;** December 4, 1989

1. In a decision dated December 14, 1988, the Board issued an arrest warrant in the usual form requiring the presence of Manuel Araujo at 9:30 a.m. on Monday, January 30, 1989, at the

continuation of its hearing in this matter at the Board's hearing rooms on the sixth floor of 400 University Avenue in the City of Toronto.

2. It appears that the Sheriff of the Judicial District of Peel was unable to execute the warrant against Manuel Araujo because he had left the country and was not expected to return to Canada until some time during the month of April, 1989. In these circumstances, the Board adjourned this application *sine die* for a period not exceeding one year.

3. In a decision dated July 31, 1989, the Board relisted this matter for hearing at the request of the applicant and again issued an arrest warrant in the usual form requiring the presence of Manuel Araujo at 9:30 a.m. on Monday, September 11, 1989, at the continuation of its hearing in this matter at the Board's hearing rooms on the sixth floor of 400 University Avenue in the City of Toronto. The Board was advised by the Sheriff of the Judicial District of Peel that he had been unable to find Manuel Araujo and had accordingly been unable to execute the warrant for the arrest of Manuel Araujo. In a decision dated September 25, 1989, the Board stated as follows:

3. This is not the first occasion on which the sheriff has been unable to execute a warrant for the arrest of Manuel Araujo. It is the responsibility of the applicant to ascertain the address of Manuel Araujo so that the Board may advise the sheriff where to execute the warrant for the arrest of Manuel Araujo. Accordingly, the Board directs the applicant to advise the Board of the address of Manuel Araujo so that the sheriff may be able to execute the warrant for the arrest of Manuel Araujo and the Board may proceed to hear this referral under section 124 of the *Labour Relations Act*.

4. In these circumstances, the hearing in this matter is adjourned. This matter is referred to the Registrar for the purpose of relisting for hearing at the earliest possible date upon the applicant providing the Board with the correct address of Manuel Araujo.

4. The applicant has now advised the Board by letter of the present address of Manuel Araujo and has again requested that this matter be set down for hearing. The Registrar has listed this matter for hearing on January 11, 1990. In these circumstances, the Board again issues an arrest warrant in the usual form requiring the presence of Manuel Araujo at 9:30 a.m. on Thursday, January 11, 1990, at the continuation of its hearing in this matter at the Board's hearing rooms on the six floor of 400 University Avenue in the City of Toronto.

---

**1237-85-U Jeanne St. Pierre, Complainant v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. Local 444 and Chrysler Canada Ltd., Respondents**

**Parties - Practice and Procedure - Board remaining seized to resolve disputes over Board order - Lawyer for complainant requesting hearing to deal with complainant's unpaid legal bill - Board decision requiring union to retain counsel not effecting retainer of counsel - Lawyer not having standing to seek clarification or enforcement of Board order when acting personally and not for party to proceeding - Application dismissed**

**BEFORE:** Owen V. Gray, Vice-Chair.

**DECISION OF THE BOARD;** November 21, 1989



1. In paragraph 25 of my decision of June 6, 1986 in this complaint (reported at [1986] OLRB Rep. June 883) I said that:

25. In summary, the Board finds and declares that the respondent trade union acted arbitrarily in deciding to withdraw the complainant's discharge grievance, contrary to section 68 of the *Labour Relations Act*, and orders and directs that:

- (a) The respondents forthwith submit Jeanne St. Pierre's discharge grievance to arbitration by a sole arbitrator under the applicable collective agreement, and the respondent Chrysler shall not raise any objection based on the earlier withdrawal or intervening delay;
- (b) any control the respondent trade union may have over the identity of the arbitrator shall be exercised jointly by it and the complainant;
- (c) the respondent trade union shall retain counsel jointly selected by it and the complainant to act in its name and at its expense to represent the complainant's interest at and in connection with the arbitration of her grievance; and
- (d) in the event the grievance is upheld and the arbitrator makes an order for compensation, the respondent union shall pay the complainant the portion of that compensation referable to losses during the period between May 2, 1983, and the date on which this decision would have been released had the complainant acted promptly in filing this complaint and the complainant shall forego that portion of the award which is referable to the period from that date to the actual date of release of this decision.

The Board remains seized of this matter to resolve and dispute arising over the interpretation or implementation of these directions and orders.

Ms. St. Pierre's grievance succeeded at arbitration. A hearing was later scheduled before me to deal with an issue which arose between the complainant and respondent concerning the question identified in paragraph 25(d) of my decision. That issue was settled between the complainant and respondent on the day of that hearing, December 22, 1987.

2. The Board has now received the following letter from a lawyer with the firm which represented Ms. St. Pierre before the Board in this matter:

UAW Local 444 and Jeanne St. Pierre  
Board File No. 1237-85-U

Your decision in this case dated June 6, 1986, provided among other things, that Jeanne St. Pierre, ("the complainant") and the UAW Local 444 ("the Union") would retain counsel jointly at the Union's expense to represent the complainant at the arbitration of her grievance.

Your decision also provided that:

"the Board remains seized of this matter to resolve any dispute arising over the interpretation or implementation of these directions and orders"

I acted for the complainant on the arbitration hearing before Professor Ian Hunter in January of 1987.

I appeared before you on behalf of the complainant on December 22, 1987 to determine the period for which the Union was to compensate the complainant as a result of her discharge from employment.

I subsequently performed various services for Ms. St. Pierre relating to this matter until March 28, 1988.

The complainant changed solicitors to Mr. Angus MacMillan as of March 15, 1988.

I presented an account, dated April 5, 1989 to the complainant and to the Union for my services performed between April 14, 1987 and March 28, 1988.

A former account presented to the complainant and the Union dated April 14, 1987, was paid by the Union on December 4, 1987.

The Union by letter to me dated April 1, 1987 advised that it would no longer pay for legal services performed on behalf of the complainant.

I served a Notice of Solicitor and Client Assessment against the complainant and the Union on June 6, 1989 with respect to my account dated April 5, 1989.

The Union disputed the terms of the retainer as set out in your decision of June 6, 1986.

The Union argued that your decision of June 6, 1986 had determined the retainer and that the Master had no jurisdiction to look into the solicitor's account based upon your Order, and in any event, denied liability for payment of the solicitor's account on behalf of the complainant.

The Master set aside the praecipe Order of the Deputy Local Registrar of the Supreme Court of Ontario referring the solicitor's bill to an assessment officer.

I would ask that the Board reconvene strictly for the purpose of seeking directions with respect to whether or not the retainer pursuant to your Order extended to March 28, 1988 or was terminated prior to that date.

I do not wish to burden the Board with a relatively minor issue; however, the Union has taken a position that it should not be responsible to pay Ms. St. Pierre's legal bill past April 14, 1987.

In the circumstances, I consider that I have no other alternative but to ask the Board to reconvene this matter to resolve the issue of when the retainer for my services was terminated.

If you agree that the Board "remains seized of this matter" for the purpose of interpreting the Board's directions on the issue of retention of counsel for Ms. St. Pierre, would you be kind enough to ask the Registrar to arrange for a hearing date at your and the parties convenience?

3. I do not propose to direct that the Registrar arrange a hearing date. It does not appear that Ms. St. Pierre's former counsel has standing to raise a question about the interpretation or implementation of my decision nor, indeed, does it appear that he has raised such a question.

4. It is important to recognize that paragraph 25(c) of my decision did not effect a retainer of counsel. It required that the respondent trade union retain counsel. As between the trade union and the lawyer it retained, the terms of the retainer would have been established by the dealings between them. While the trade union's instructions might have been to act as my order contemplated, that retainer would have come about as a result of the giving and the accepting of those instructions by the trade union and the lawyer, respectively, and not by operation of my order. If the trade union had not retained a lawyer to act or had retained a lawyer on terms the complainant considered inconsistent with my order, she could have applied to the Board for clarification of the order or redress for the default. As they are the persons against whom and in favour of whom the order concerning the retaining and payment of counsel was made, the trade union and the complainant are, however, the only persons with a legal interest in the enforcement or clarification of my order. Ms. St. Pierre's former counsel does not purport to act for her or for the union in requesting that a hearing be scheduled for the purpose of interpreting my directions on the issue of retention of counsel. He does not, therefore, have standing to seek clarification or enforcement of my order.

5. As will be apparent from what I already said, I would not have thought that my decision of June 6, 1986 "had determined the retainer" as the union is said to have argued before the Master. The existence and terms of any retainer would have been determined by the dealings between the trade union and the lawyer. Ms. St. Pierre's former counsel is careful not to suggest that the union's argument was given by Master as his reason for setting aside the *praecipe* order of the Deputy Local Registrar. The mere fact that retainer was disputed would have been a sufficient basis for the Master's decision, having regard to the language of section 3 the *Solicitors Act*, R.S.O. 1980, c. 478.

6. When the lawyer's retainer is disputed, disputes over the non-payment of a lawyer's account are the proper subject matter of an action in the Courts. I do not propose to make the dispute referred to in the lawyer's letter the subject of a hearing before me, particularly when neither of the parties legally affected by that aspect of my order has asked that I do so.

---

**3168-88-R; 0173-89-R; 0241-89-U** United Brotherhood of Carpenters and Joiners of America, Local 27, Applicant v. **Shearwall Forming (East) Ltd.**, Respondent v. The Form Work Council of Ontario, Intervener; United Brotherhood of Carpenters & Joiners of America, Local Union 27, Applicant v. Automatic Structures Ltd., Respondent v. The Form Work Council of Ontario, Intervener; United Brotherhood of Carpenters and Joiners of America, Local 27, Complainant v. Automatic Structures Ltd., Respondent

**Bargaining Unit - Certification - Construction Industry - Union seeking to carve out craft unit of concrete form workers from broader existing unit - Board reviewing jurisprudence on displacement applications in construction industry - Board following general practice of allowing craft to carve out in construction industry and having description of non-ICI portion of bargaining unit mirror ICI portion**

**BEFORE:** G. T. Surdykowski, Vice-Chair, and Board Members J. Lear and S. Weslak.

**APPEARANCES:** David McKee, Luis Camara and Tony Bucci for the applicant; Carl Peterson and Nick Sisti for the respondent Automatic Structures Ltd; James G. Knight for the respondent Shearwall; A. M. Minsky and R. Lotito for the intervener.

**DECISION OF G. T. SURDYKOWSKI, VICE-CHAIR, AND BOARD MEMBER S. WESLAK:**  
December 6, 1989

1. By decisions dated May 3 and May 8, 1989 in Board File Nos. 3168-88-R and 0173-89-R respectively, the Board, differently constituted in part in each case, made certain findings and directed that the pre-hearing representation vote requested by the applicant in each case ("Local 27") be held. A hearing was then convened to hear the evidence and representations of the parties with respect to the matters in issue between them.

2. It bears repeating that each of the applications for certification herein are applications for certification within the meaning of section 119 of the *Labour Relations Act* and have been made pursuant to section 144(1) of the Act.



3. Board File No. 0241-89-U is a complaint under section 89 of the Act.

4. At this stage of the proceedings, the Board must determine the unit of employees that is appropriate for collective bargaining in each application. In each, the applicant seeks to be certified for what is, in effect, its standard construction industry bargaining unit of carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional ("ICI") sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry in the geographic area commonly referred to as Board Area 8 (save and except non-working foremen and persons above the rank of non-working foreman). In each application, the respondent and the intervener assert that the appropriate bargaining unit is that covered by a collective agreement between them and which covers "all employees of the respondent engaged in concrete forming construction in the Province of Ontario, including employees working on Federal, Provincial and Municipal projects". It is common ground that the carpenters and carpenters' apprentices employed by the respondent fall within that bargaining unit. At issue then, is the applicant's right to carve out its craft unit from the broader existing ones which are presently represented in bargaining by the intervener the Form Work Council of Ontario (the "Council").

5. The Council argues that the bargaining unit for each of these applications should reflect the composite crew of employees engaged in concrete forming construction as bargained for by the Council. The Council does not suggest that Local 27 can represent any employees other than carpenters and carpenters' apprentices in the ICI sector of the construction industry. However, it submits that the bargaining unit can and should be described in terms of carpenters and carpenters' apprentices in the ICI sector in the Province of Ontario and *all employees* of the respondent engaged in concrete forming construction in all sectors of the construction industry excluding the ICI sector in the Province of Ontario. The Council submits that these applications should be treated as displacement applications under section 6(1) rather than as craft applications under section 6(3) of the Act. The Council submits that the evidence before the Board establishes that concrete forming construction is a special, unique situation in which the Council and employers engaged in concrete forming construction have created a collective bargaining structure which is both efficient and recognizes the community of interest shared by employees, whether carpenters or labourers or others, engaged in it. The Council asserts that permitting Local 27 to carve out its craft would create (inter-union) jurisdictional problems where there are none and would have a destabilizing effect on the industry.

6. The respondent Automatic Structures Ltd. ("Automatic") agrees with the submissions of the Council. It also emphasizes that there is no evidence whatsoever of any history of organizing by Local 27 with respect to the concrete form work industry in the residential sector of the construction industry. Automatic also argues that because bargaining rights are both granted and terminated in a displacement application, and it is not appropriate to terminate ICI bargaining rights where there are no employees in the ICI bargaining unit at the material times, the applicant can only properly bring a displacement application for certification (which these are) with respect to the non-ICI sectors pursuant to section 144(3) of the Act.

7. The respondent Shearwall Forming (East) Ltd. ("Shearwall") agrees with the submissions of the Council and Automatic. It stresses that there is no reasonable prospect that either it or Automatic will ever do any work in the ICI sector and that the only "real" bargaining unit is therefore one which does not relate to the ICI sector. Therefore, submits Shearwall, Local 27's applications should be treated as having been made pursuant to section 144(3) of the Act.

8. The Council and Automatic submit that the Board's decisions in *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254 and [1989] OLRB Rep. March 234 are wrong. In that respect, they

rely on some of the dicta in *Reitzel Heating & Sheet Metal Ltd.* [1988] OLRB Rep. Dec. 1310. In the alternative, the Council and Automatic submit that the *Ellis-Don Limited* decisions, *supra*, are distinguishable from the applications before the Board in this proceeding. Shearwall also argues that the decisions in *Ellis-Don Limited*, *supra*, are wrong. It submits the logic of the *Labour Relations Act* is that in a displacement application for certification the applicant must accept the existing bargaining unit insofar as that is possible. It submits that where there is a conflict between this displacement policy (that is, that a trade union must take a bargaining unit as it finds it) and any other factors, the displacement policy should prevail. In the alternative, Shearwall submits that even if the decisions in *Ellis-Don Limited*, *supra*, are right, the Board should reach a different result on the facts in this proceeding.

9. Local 27 argues that the *Ellis-Don Limited* decisions, *supra*, are correct and that *Reitzel Heating & Sheet Metal Ltd.*, *supra*, is not inconsistent with it. It relies upon the decisions in *Ellis-Don Limited*, *supra*, and submits that there is no difference of substance between the material elements in these applications and those found by the Board in *Ellis-Don Limited*, *supra*. Local 27 submits that it is entitled to bring these applications pursuant to section 144(1) and points out that the very argument made by the Council with respect to the appropriate bargaining unit in these proceedings was considered and rejected by the Board in *Aero Block and Precast Ltd.*, [1984] OLRB Rep. Sept. 1166.

10. In paragraphs 39 to 57 of *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254, the Board explained that:

39. *In applications for certification which do not relate to the construction industry where there is an existing bargaining unit represented by a trade union, the Board's general practice is to view the existing bargaining unit as being prima facie appropriate for the application.* Notwithstanding this strong presumption in favour of an existing bargaining unit, the Board will find another bargaining unit appropriate for an application if it is satisfied there are compelling reasons to do so (see, for example, *Canadian Red Cross Society Blood Transfusion Service*, [1978] OLRB Rep. May 408; *Milltronics Ltd.*, [1980] OLRB Rep. Jan. 56; *Ontario Hydro*, [1980] OLRB Rep. June 882; *W.M.I. Waste Management of Canada Inc.*, [1981] OLRB Rep. March 409; *Scarborough Public Utilities Commission*, [1982] OLRB Rep. June 929; *Bestview Holdings Ltd.*, [1983] OLRB Rep. Feb. 185). In addition, section 6(3) gives the Board a discretion to carve out a craft unit from an existing industrial one. In determining how to exercise its discretion in such circumstances, the Board will consider the relevant circumstances, including the general nature of, and organizational practices in, the industry concerned, the history of collective bargaining in the industry and with the employer concerned, the organizational practices of the incumbent trade union, the community of interest between the craft employees in question and the rest of the existing bargaining unit employees, and the history of representation of the craft employees by the incumbent trade union. As a practical matter, the Board has generally refused to sever craft units from industrial units in circumstances where the parties do not agree that it is appropriate to do so and there is a history of proper representation of the craft group by the incumbent.

40. *Historically, the Board has taken a different approach to craft severance in applications for certification in the construction industry.* The Board has long

recognized that the nature of the employment relationship in the construction industry is different from that in other industries (see for example, J. A. Willes, *The Craft Bargaining Unit*, Industrial Relations Centre, Queen's University, 1970, generally and specifically at p. 30; George W. Adams, Q.C., *Canadian Labour Law*, (Canada Law Book Inc., Aurora, 1985) at pp. 863-893). The nature of the employment relationship in the construction industry has been partly responsible for the development of crafts or trades, and for the development of trade unions along trade or craft lines. Indeed, there are many employers in the construction industry which arrange their affairs in this manner as well; that is, they employ persons in one or more in specific trades to do the work of the trade to which they "belong" as required in the employer's business. Parenthetically, we observe that the term "craft" generally refers to a particular type of skilled or semi-skilled work (e.g. carpentry). The term "trade" is generally used to refer to an occupation or vocation (e.g. carpenter). For labour relation purposes, these terms have come to be used virtually interchangeably and, for our purposes, we consider them to be synonymous.

41. As a result of the nature of, and history of trade union organization in, the construction industry, the Board has generally attached great weight to trade considerations and, in the absence of any existing bargaining unit, certification in the construction industry has traditionally been on the basis of trade. Even where a non-craft trade union makes an application for certification in the construction industry (and there is no existing unit), the Board's practice is to describe the bargaining unit in terms of the trades at work on the date of application (see *Duron Ontario Limited*, [1976] OLRB Rep. Nov. 734; *A. N. Shaw Restoration Ltd.*, [1981] OLRB Rep. Mar. 241). Indeed, the *Labour Relations Act* recognizes craft interests both generally (section 6(3) and 91), and specifically in the construction industry in the province-wide bargaining scheme (sections 137 to 151) which is largely premised on the primacy organization by trade. Prior to provincial bargaining and the subsequent enactment of section 144, the Board's approach to applications for certification in the construction industry was to determine the bargaining unit pursuant to section 6(3) where the applicant was a craft trade union, and section 6(1) where the applicant was a non-craft trade union. In displacement applications, however, the appropriate bargaining unit was always determined under section 6(1) which allowed non-craft trade unions to displace craft unions as bargaining agents for craft bargaining units. We note that in *Duron Ottawa Ltd.*, [1983] OLRB Rep. Oct. 1639 the Board commented that:

3. In ordering the vote for such a bargaining unit, the Board has departed from a long established policy of this Board in displacement situations. That policy is perhaps best enunciated in the case of *Duron Ontario Limited*, [1976] OLRB Rep. Nov. 737 where, simply put, even in cases involving the construction industry and notwithstanding the Board's recognition of the craft structure of the construction industry, the Board in displacement cases has always determined the bargaining unit as a displacement unit under section 6(1) of the Act, and the incumbent was required in such displacement applications to take all the employees in the existing bargaining unit.



To the extent that this comment suggests that it had been the Board's practice, before the advent of provincial bargaining, to not allow a craft construction union to carve out its trade from an existing union, it is inconsistent with the authorities, including the *Duron Ontario Limited* decision to which it refers (see, for example, *Kent Tile & Marble Co. Ltd.*, 61 CLLC ¶16,204; *Ellwood Robinson Limited*, [1967] OLRB June 261; *Pre-Con Murray Limited*, [1967] OLRB Rep. Oct. 684; *J. D. Coad Construction Company Limited*, [1969] OLRB Sept. 755; *Nadeco Limited*, [1975] OLRB Rep. April 41; *Canwall Contractors Ltd.*, [1975] OLRB Rep. July 532; *Duron Ontario Limited*, *supra*).

42. The Board's general discretion, under section 6(1) of the Act, to determine what bargaining unit is appropriate in applications for certification in the construction industry, already somewhat limited by section 6(3) which deems craft units to be appropriate, was further limited by the enactment, in May 1980, of section 144.

43. Section 144 covers all applications for certification in the construction industry (see *Clarence H. Graham Construction Ltd.*, [1981] OLRB Rep. Sept. 1195; *Ninco Construction Ltd.*, [1982] OLRB Rep. Nov. 1692; *Manacon Construction Ltd.*, [1983] OLRB Rep. Mar. 407 and July 1104). Under the province-wide bargaining provisions of the Act, some construction industry trade unions are designated to represent certain specific trade or crafts in bargaining in the ICI sector of the construction industry. A trade union represented by a designated employee bargaining agency may, at its option, apply for certification under either section 144(1) or (3), or enter into voluntary recognition agreements under section 144(4). Construction trade unions which are not represented by a designated employee bargaining agency, and are therefore not covered by sections 144(1)-(4) of the Act, such as the Christian Labour Association of Canada, can apply for certification or enter into voluntary recognition agreements in the construction industry under section 144(5).

44. The designation orders issued pursuant to section 139(1) of the Act describe the provincial units of employees contemplated by the province-wide collective bargaining scheme established by the Act for the ICI sector of the construction industry in terms of trades and designate, for each such bargaining unit, an employer and employee bargaining agency. In effect, such orders designate the trade(s) which "belongs" to each employee bargaining agency and its affiliated bargaining agents. Employee bargaining agencies, and their affiliated bargaining agents, can only represent, in the province-wide ICI collective bargaining scheme, those employees who are in a trade they have been designated to represent (see *Ninco Construction Ltd.*, *supra*; *Manacon Construction*, *supra*; *Superior Plumbing and Heating Ltd.*, [1986] OLRB Rep. Nov. 1589; *D. E. Witmer Plumbing and Heating Limited*, [1987] OLRB Rep. Oct. 1228). Consequently, in applications for certification under section 144(1), the Board, although not necessarily bound to use the precise words of the designation order, cannot describe an ICI sector bargaining unit in a manner which is inconsistent with the relevant designation order. To accommodate this designation system, and recognizing that trade union representation in the construction industry has historically been

along trade or craft lines, the Board's general practice, in applications under section 144(1), is to describe bargaining units in terms of the relevant trade and using the words of the relevant designation order.

45. Consequently, while section 144 does fetter the Board's discretion under section 6(1), it has preserved and codified the Board's historical willingness (see paragraph 40 and 41 above) to carve out a craft unit from an existing construction industry bargaining unit. Indeed, *the Board has viewed such carve outs as being mandatory in section 144(1) applications* (see for example *Crown Electric*, [1982] OLRB Rep. May 660 *Duron Ottawa Ltd.*, *supra*; *Ben Bruinsma and Sons Limited*; [1984] OLRB Rep. Nov. 1542; *Aero Block and Precast Ltd.*, [1984] OLRB Rep. Sept. 1166). Even in circumstances where a (non-craft) incumbent trade union held bargaining rights for a broader bargaining unit, which included the applicant's trade, in other than the ICI sector, the Board found it appropriate to permit a trade union applying for certification under section 144(1) to carve out its craft from the existing bargaining unit in the "appropriate geographic area" contemplated by that subsection (*D. L. Stephens Contracting Niagara Limited*, [1980] OLRB Rep. Oct. 1384).

46. It is evident that the Board has a well-established general practice of permitting a craft construction trade union to apply and be certified for a bargaining unit of employees engaged in its craft, whether or not such employees are in an existing bargaining unit represented by another trade union at the time of the application. *This craft unit carve out practice in the construction industry contrasts with the practice in non-construction industry matters* where the Board, in applications where a trade union seeks to displace an incumbent bargaining agent, generally finds the appropriate bargaining unit to be one described in the same terms as the existing unit.

47. Finally, while we are unaware of any case in which the Board has been faced with a carve out issue in an application for certification under section 144(3), we observe that in circumstances where none of the construction employees of a respondent employer are represented, the Board's practice is to permit the applicant in such applications to apply for a bargaining unit described in terms of its trade or craft even if there were unrepresented employees in other trades or crafts at work for the respondent employer on the date of application. It is only where the applicant trade union seeks, in such an application, as it can, to represent employees in other than its usual or designated trade, that the Board has required it to apply for a bargaining unit described in terms of all unrepresented trades at work on the date of application.

48. In this case, Ellis-Don, Local 183, and the Form Work Council urge the Board to depart from what we have found to be the Board's general practice in the construction industry. Of course, no practice or policy can be more than a general guideline. The very nature of practices and policies is such that there must be limits and exceptions to them. Further, no policy or practice is, or should be, written in stone. To the extent that the Act allows it to be, the Board, and its practices and policies, must be responsive to developments in the real world of labour relations. The Board should be sensitive to

such changes so that its policies and practices can evolve to accommodate them rather than requiring the labour relations community to adapt to the Board.

49. Locals 183 and the Form Work Council have a long history of organizing and representing employees involved in concrete forming work both generally and particularly in the residential sector of the construction industry in Board Area 8. We have already referred to the history of the Form Work Agreement (see, paragraph 31 above). The Board summarized this history at paragraphs 8-11 and 18, which formed part of a partial agreed statement of fact submitted to the Board in these proceedings, of *West York Construction Ltd.*, *supra*:

8. Historically, wooden forms built to take a concrete pour were disassembled after a pour and then re-built for the next pour. In the 1960's, however, there was a great increase in the construction of concrete high-rise apartment buildings in the Toronto area. Because of the repetitive nature of the buildings and the fairly short spans between vertical walls, residential concrete forming forms developed a procedure by which they could re-use the same forms. The forms were moved intact from one location on a building to another by way of crane. The movement of the forms by a crane became referred to as "flying" the forms, and the forms themselves became known as "flying forms". The use of flying forms greatly increased the speed of construction and also lowered the costs associated with the construction of high-rise apartment buildings. Because of the nature of most ICI projects, generally they have not been amenable to the use of flying forms. However, as a result of certain technological advances, there is now a growing use of flying forms in ICI sector concrete forming.

9. Initially, in the Toronto area concrete forming work on high-rise apartment buildings was performed on a non-union basis. The non-union employees who performed the work tended to work as a single "gang" or "crew", and while an individual employee might be particularly proficient in one aspect of the work, when not engaged in his speciality he would on other aspects of the work as well.

10. In the mid-1960's there were a number of attempts to organize employees in the residential concrete forming field. One of these attempts involved the formation of a council of unions known as the Council of Concrete Forming Trades Unions comprised of locals of the Carpenters, Cement Masons, Ironworkers and Labourers Unions, as well as Local 793 of the International Union of Operating Engineers. The Operating Engineers Union is a trade union that represents operators and its involvement in the Council reflects the fact that flying forms are actually "flown" by a crane. The Council of Concrete Forming Trades Unions proved to have no lasting organizing success. A more lasting organizing effort, however, was undertaken by Local 183. Local 183's approach involved taking into membership all employees engaged in concrete forming except the crane



operators. In 1977 an association of concrete forming companies known as the Ontario Form Work Association entered into a collective agreement with Local 183 covering "all construction employees" employed by its member companies with the exception of crane operators represented by Local 793 of the Operating Engineers Union. Local 183 and Operating Engineers Local 793 subsequently entered into a council of unions known as the Form Work Council of Ontario. In 1979 this council entered into a collective agreement with the Ontario Form Work Association covering "all construction employees" of the forming companies belonging to the Association. Under this agreement, the crane operators were required to be members of Operating Engineers Local 793, while all other employees belonged to Local 183. Renewal agreements between the same two parties were entered into in 1981 and 1983. Although these agreements did not purport to limit their applicability to any one sector, the forming contractors belonging to the Ontario Form Work Association have generally performed the majority of their work in the residential sector. Further, we gather that the great majority of firms engaged in high-rise residential concrete forming in the Toronto area are either bound by this agreement, or by separate but similar agreements....

11. For their part, the major apartment builders in the Toronto area have grouped themselves into an association known as the Metropolitan Toronto Apartment Builders Association (the "MTABA"). In May of 1970 the MTABA entered into a collective agreement with Local 183. On November 28, 1975 the then current agreement between Local 183 and the MTABA was amended so as to require that members of the MTABA "not ... sublet concrete forming to sub-contractors other than those who are in contractual relationship with the union". It appears that this clause has been included in all subsequent agreements between the same parties....

18. The evidence indicates that since the early 1970's most high-rise apartment construction in the Toronto area has been performed pursuant to the terms of the MTABA-Building Trades Council and MTABA-Local 183 agreements. Pursuant to the MTABA-Local 183 agreement, apartment developers have sublet the concrete forming work to contractors employing Local 183 members. Pursuant to the terms of the agreement between the Ontario Form Work Association and the Form Work Council of Ontario, these contractors have employed members of Local 793 of the Operating Engineers Union to operate the cranes and members of Local 183 to do all of the remaining work, including building the forms, setting the reinforcing rods and pouring and finishing the concrete. Many members of Local 183 are in fact specialized in one aspect of the work, but when an employee's special skills are not required, he may perform other types of work, including assisting other members working at their specialities. On low-rise apartment buildings, flying forms may not be used. In these cases, members of Local 183 build the forms and then disassemble them after each pour. As already indicated, the

contrast to the procedures utilized in the residential sector, most unionized ICI concrete forming is performed pursuant to the terms of the provincial agreements of the various trades, with members of the carpenters union building and repairing the forms.

50. Local 27 has been active in organizing carpenters and carpenters' apprentices involved in form work in the ICI sector but it has no history of organizing at all comparable to that of Local 183 and the Form Work Council within the residential sector in Board Area 8. Further, the building, erecting, and setting of forms have not been recognized as being a separate trade or trades. In the ICI sector of the construction industry, trade union organization and representation has been primarily on a trade basis. However, the union organization and representation of such employees in the residential sector of the construction industry in Board Area 8, has been largely on a multi-craft or composite crew basis rather than by trade as such. For over thirty years, the Board has recognized that concrete forming construction in the residential sector of the construction industry is generally performed by employees working as a crew and with each member of the crew exercising the skills of more than one craft and being interchangeable with other members of the crew (see, for example, *Peniche Construction Forming, supra*). As a result, it appears that carpenters and carpenters' apprentices employed doing concrete form work have some community of interest with other form workers. In that respect, Form Work and Form Work style agreements to which the Form Work Council and Local 183 are bound have, on the evidence before the Board, adapted to the needs of and changes in the construction industry and, as such, have worked to the benefit of both employers and employees covered by them. In that respect, that there was no suggestion that carpenters or carpenters' apprentices have not been properly represented under the Ellis-Don Form Work style or any other form work style agreement to which Local 183 or the Form Work Council are party, and Ellis-Don argued that permitting the carve out requested by Local 27 would generally reduce the efficiencies of its "production" and supported Local 183's and the Form Work Council's submission that such a carve out would destabilize and generally put the high-rise residential construction industry back twenty years.

51. One of the Board's fundamental concerns when it deals with an application for certification is that the parties begin their relationship with a bargaining unit structure conducive to ongoing collective bargaining. In that respect, fragmentation, which can, especially in the construction industry, lead to jurisdictional disputes, picketing problems, and strike oriented lay-offs, is to be avoided for both labour relations and "efficiency of production" reasons.

52. Also, while the demarcations between trade jurisdictions in the construction industry have never been completely clear, these demarcations have, in recent years, become even more blurred, and concomitantly the areas of overlap between trade jurisdictions have grown. This is due in part to changes in the construction industry itself. For example, it is no longer fair to say, if ever it was, that construction labourers are, as a general rule, unskilled and unsophisticated workers. Another reason for this development is

the aggressive approach taken by the Labourers' International Union of North America to expanding its trade jurisdiction in circumstances where the very nature of its trade means there is a potential for, if not an actual, overlap between it and virtually every other trade in the construction industry. Perhaps the most obvious struggle in that respect has been the one between the Labourers' International Union of North America and the United Brotherhood of Carpenters and Joiners of America in the residential sector of the construction industry in Board Area 8.

53. Consequently, there are a number of factors which weigh against permitting Local 27 to carve out these carpenters and carpenters' apprentices employed by Ellis-Don who are covered by the Ellis-Don Form Work style agreement.

54. On the other hand, the concrete forming construction work relationship between Ellis-Don and the Form Work Council is both relatively short and different in nature from the concrete forming construction bargaining relationships excluded from the general designation order for the Labourers' International Union of North America and the Labourers' International Union of North America, Ontario Provincial District Council (see para. 36 above). The Ellis-Don Form Work style agreement is limited in its application to concrete forming construction in the residential sector in Board Area 8 and the County of Simcoe. Further, *while concrete forming construction is generally performed by employees working as a composite crew, the classification schemes in the Form Work and Form Work Style agreements suggest that members of such a crew do not exercise so similar a combination of skills to be entirely interchangeable. The evidence establishes that many concrete formworkers specialize in an aspect of concrete forming work. Although this specialization may not be precisely along craft lines, it does tend to follow them. It is not the fact that they are formworkers that makes it difficult to determine what craft any given employee is engaged in. It is the blurring of the craft lines themselves which does this. In any case, the fact that employees work in a composite crew does not mean that carpenters cannot be distinguished from labourers, even when the work being done by the employee(s) in question falls within the overlap between the two trade jurisdictions.*

55. *We also observe that fragmentation of bargaining units has always been (and is) the rule rather than the exception in the construction industry, largely as a result of the very nature of that industry. This is reflected in the way in which both construction employers and construction trade unions have generally structured their affairs, and in the nature of the employment relationship in the construction industry (see para. 40 above). That has not prevented the construction industry from prospering in either the ICI or other sectors. In some sectors (for example, ICI, pipeline and electrical power systems) composite crews of employees from different trades have been used to decrease the inefficiencies that result from such fragmentation. One result, perhaps, is that the lines between crafts have become more blurred. However, the fundamental nature of the construction industry; that is, its craft orientation and basis, has not been significantly altered.*

[emphasis added]



In this case, the Council, Automatic, and Shearwall submit that the Board in that first *Ellis-Don Limited* decision erred in its interpretation of the jurisprudence (and particularly of *Duron Ottawa Ltd.*, [1983] OLRB Rep. Oct. 1639) by failing to follow what they assert has been the Board's long-standing displacement policy in construction industry applications for certification. That is substantially the same as one of the arguments made in support of the request for reconsideration of the Board's decision in *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254. The Board disposed of that argument in *Ellis-Don Limited*, [1989] OLRB Rep. March 234 as follows:

22. In *Duron Ontario Limited*, [1976] OLRB Rep. Nov. 734 (which was decided prior to the enactment of the construction industry province-wide bargaining provisions, including section 144, of the Act), the Board observed that its approach to applications for certification relating to the construction industry was to determine bargaining units pursuant to section 6(2) of the Act where a trade union which satisfies the conditions of section 6(2) requests a (its) craft bargaining unit. Otherwise, the bargaining unit was determined under section 6(1). Consequently, when a non-craft trade union applied to represent employees in a existing bargaining unit, the Board determined the appropriate bargaining unit under section 6(1), and, as a matter of policy, generally found that appropriate unit to be the existing one. *Duron Ontario Limited*, *supra*, did not suggest that a trade union which satisfies the conditions of section 6(2), as Local 27 clearly does, and applies to represent a (its) craft unit of employees, could not carve out such a bargaining unit from a broader existing one. It was only to the extent, if it does so at all, that *Duron Ottawa Ltd.*, [1983] OLRB Rep. Oct. 1639 suggests otherwise that the Board found it (in paragraph 41 of the Decision) to be inconsistent with the earlier authorities and Board practice. We note that *Duron Ottawa Ltd.*, *supra*; *Crown Electric*, [1982] OLRB Rep. May 660, and *Aero Block and Precast Ltd.*, [1984] OLRB Rep. Sept. 1166 all involved, as the Board points out in paragraph 45 of the Decision, applications under section 144(1) of the Act in which a craft carve out from an existing bargaining unit was found to be appropriate. We find ourselves constrained to observe that the passage from *Crown Electric*, *supra*, quoted in the request for reconsideration by Local 183 and the FWCO, has been taken out of context by them. Viewed in context, that passage forms part of the Board's recitation of the positions taken by the parties in that case. It was the respondent employer and the incumbent trade union who were asserting, unsuccessfully in the result, that that was the Board's long-standing policy. Except to the limited extent specified in the Decision with respect to *Duron Ottawa Ltd.*, *supra*, the Board did not reject the analysis or conclusions reached in *Duron Ottawa Ltd.*, *supra*, *Crown Electric*, *supra*, or *Aero Block and Precast Ltd.*, *supra*. On the contrary, it extended and applied them to the issues before it and concluded that it was appropriate to permit a craft carve out in Board File No. 3291-88-R (the only one in which it remained an issue).

(Note: What is now section 6(3) was section 6(2) at the time of the *Duron Ontario Limited*, [1976] OLRB Rep. Nov. 734 decision. The reference to section 6(2) in paragraph 22 of the *Ellis-Don Limited*, [1989] OLRB Rep. March 234 decision obviously should have been to what is now section 6(3)).

11. After the first *Ellis-Don Limited* decision issued but before the second (which disposed

of the request for reconsideration), the Board's decision in *Reitzel*, *supra*, issued. In paragraphs 19, 27 and 28 of that decision, the Board commented that:

19. One of those policies is the Board's policy on displacement applications. Although *Crown Electric* does indicate that where a trade union is required to bring its application under section 144(1) of the Act it must meet the requirements of that section, it also emphasizes that *if section 144(1) is inapplicable (as is the case here)*, "the Board's long standing policy that where an applicant seeks to displace an incumbent bargaining agent and where a Collective Agreement is in force, the appropriate bargaining unit is a unit described in the collective agreement between the employer and the incumbent" continues to be applicable.

• • •

27. We concur with the general proposition that in the exercise of the Board's discretion, in a displacement application the policy of the Board has been that the appropriate bargaining unit is the unit held by the incumbent trade union. In the absence of some clear and compelling reasons why this long standing policy of the Board ought to be disregarded, we would not lightly set aside or interfere with this well established policy. We are of the view that such clear and compelling reasons do exist in the circumstances of this case where we are concerned with province-wide bargaining in the ICI sector of the construction industry. In our opinion, the Board's general policy on displacement applications is not necessarily applicable in the ICI sector of the construction industry in light of the statutorily compelled scope of the incumbent's unit.

28. In an application for certification by way of displacement, the Board has stated that the established bargaining structure is *prima facie* appropriate - particularly in those instances where there has been a long, well established collective bargaining relationship. It is difficult to envisage any better evidence of the "appropriateness" of a bargaining unit than the situation where the parties to a collective agreement have developed both the bargaining unit and the bargaining structure which have proven viable over a period of time. In the present circumstances however, because the incumbent is an A.B.A., when it organizes employees in the ICI sector of the construction industry, the scope of its bargaining unit and its rights to represent employees in the ICI sector, and its bargaining structure with *Reitzel* have been predetermined by the legislature. In the ICI sector, A.B.A.'s are prevented from organizing certain employees, because of the limitations found in their provincial designations. (See *Ninco Construction Ltd.*, [1982] OLRB Rep. Nov. 1692; *Manacon Construction Ltd.*, [1983] OLRB Rep. March 407 and July 1104, *Superior Plumbing and Heating Ltd.*, [1986] OLRB Rep. Nov. 1589; *D.E. Witmer Plumbing and Heating Ltd.*, [1987] OLRB Rep. Oct. 1228). Once organized by an E.B.A., employees are automatically plugged into the provincial agreement. Pursuant to the mandatory provisions of the Act, that collective agreement is a two-year agreement which expires by-annually on the 30th day of April. We are of the view that where the legislation has, in essence, statutorily determined both the bargaining unit and the bargaining structure, the Board's policy that the incumbents' bargaining unit if *prima*

*facie* appropriate, based as it is on the “history” of the collective bargaining relationship between the parties, need not necessarily prevail. The underlying assumption or rationale for the Board’s displacement policy - the collective bargaining history of the parties, the implicit right of the parties to alter, extend or otherwise modify the bargaining unit to suit their needs - is not valid in instances where the incumbent is an A.B.A. or an E.B.A. and the raiding union is seeking to displace the incumbent’s province-wide bargaining rights in the ICI sector.

[emphasis added]

There is no reference in *Reitzel* to the first *Ellis-Don* decision. Nor is there any reference to *Reitzel* in the second *Ellis-Don* decision.

12. We agree with the Board’s analysis of the jurisprudence in the *Ellis-Don* decisions, *supra*. While section 6(1) of the Act gives the Board a broad general discretion to determine the “unit of employees that is appropriate for collective bargaining” in applications for certification relating to the construction industry, that discretion is limited and directed by sections 6(3), 119, 139 and 144 of the Act (see *Wraymar Construction and Rental Sales Ltd.*, [1989 OLRB Rep. June 682]). It is evident, as the Board has long recognized, that the nature of the construction industry is different from the nature of “other industries”. That is underlined by the extensive provisions in the Act which apply only to the construction industry. Consequently, decisions which do not relate to the construction industry are of little assistance on this issue.

13. Indeed, it is not entirely clear, given the wording of section 6(3), that the Board can treat a displacement application for certification by a craft trade union as being made under section 6(1) rather than under section 6(3) of the Act. Regardless of that however, it is well settled that a trade union which is an affiliated bargaining agent of a designated employee bargaining agency, and which is therefore subject to the provisions of sections 144(1) through (4) of the Act has a right to select whether it will make an application for certification under section 144(1) or under section 144(3). The fact that an employer is not, or is not likely in the future to have employees engaged in the ICI or any other sector of the construction industry, does not affect such a trade union’s right to choose how it will apply (see, for example, *Colonist Homes Ltd.*, [1980] OLRB Rep. Dec. 1729; *Watcon Inc.*, [1981] OLRB Rep. Nov. 1697; *Dagmar Construction Limited*, [1987] OLRB Rep. Apr. 480). Nor does the fact that a displacement application, if successful, will have the effect of terminating an incumbent trade union’s bargaining rights affect this right to choose. There is nothing in either the provisions or the logic of the Act which requires an applicant which is an affiliated bargaining agent to take an existing bargaining unit as it finds it. Indeed, where the existing bargaining unit includes employees in the ICI sector who perform the work of a craft which the employee bargaining agency of which the applicant is an affiliated bargaining agent has not been designated to represent, the applicant *cannot* (as the Council recognizes in its submissions) take the bargaining unit as it finds it. Both the provisions and the logic of the Act make a craft carve out mandatory in such circumstances. Were it otherwise, an affiliated bargaining agent could not obtain bargaining rights for its own craft in circumstances in which employees engaged in that craft and employees engaged in other crafts are in one bargaining unit represented by an incumbent trade union which is not an affiliated bargaining agent, like the Christian Labour Association of Canada (“CLAC”), for example. There is nothing in the Act or its logic which mandates such a result and the Board has never found it appropriate to approach applications for certification in a manner which would prevent an affiliated bargaining agent from seeking bargaining rights for employees in a craft or trade which its employee bargaining agency has been designated to represent in the ICI sector.



14. Although the Board has previously expressed some doubts as to the ability of the Minister of Labour to declare or deem something which is an affiliated bargaining agent to not be one (see *Rockwall Concrete Forming (London) Limited*, [1988] OLRB Rep. Sept. 963), it is clear, as the Board recognized in *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254 (at paragraph 36), that neither the Council nor any of its constituent trade unions are a designated employee bargaining agency or an affiliated bargaining agent of one with respect to employees engaged in concrete forming construction (see also *Matterhorn Construction (Hamilton) Limited*, [1981] OLRB Rep. Sept. 1276 at paragraphs 6 and 7). Concrete form work has not been exempted or excepted from the province-wide ICI collective bargaining scheme in a general way. Rather, there is a limited exception or exemption which has been made for some concrete forming construction collective bargaining relationships to the extent, and only to the extent, that such specific relationships have been so exempted. The agreements relied upon by the Council and the respondents in these proceedings are section 144(5) type of collective agreements in the sense that they apply to section 144(5) type bargaining units. Sections 144(1) through (4) do not apply to these units and, in that sense, the Council is in no different position than other construction trade unions, like the CLAC, which are neither employee bargaining agencies nor affiliated bargaining agents of one.

15. We were referred to no cases, and we are aware of none, in which a construction industry craft trade union has not been permitted to carve out its craft from a broader existing bargaining unit, whether represented by an employee bargaining agency or an affiliated bargaining agent of one or otherwise. On the contrary, the Board's jurisprudence is replete with examples of applications for certification in which a construction industry trade union has been permitted or even required to so carve out its craft (see, for example, *Kent Tile and Marble Co. Ltd.*, 61 CLLC ¶16,204; *Ellwood Robinson Limited*, [1967] OLRB Rep. June 261; *Pre Con Murray Limited*, [1967] OLRB Rep. Oct. 684; *J. D. Coad Construction Company Limited*, [1969] OLRB Rep. Sept. 755; *Nadeco Limited*, [1970] OLRB Rep. Apr. 41; *Canwall Contractors Limited*, [1975] OLRB Rep. July 532; *Crown Electric*, [1982] OLRB Rep. May 660; *Ben Bruinsma & Sons Limited*, [1984] OLRB Rep. Nov. 1542; *Aero Block and Precast Ltd.*, *supra*; *D. L. Stephens Contracting Niagara Limited*, [1980] OLRB Rep. Oct. 1384). Even in *Duron Ottawa Ltd.*, *supra*, which the respondents and the Council submit the Board misinterpreted in the *Ellis-Don* decisions in which they submits stands for the proposition that the Board's general practice, in effect, is to not allow craft carve outs in the construction industry, the Board observed, at paragraph 4:

... that the bargaining unit sought by the applicant, namely, a bargaining unit of cement masons correctly describes, in generic terms, the employees who would be bound by its provincial agreement. Further, to require the applicant to take construction labourers would in fact require the applicant to assume bargaining rights for employees who would not be bound by its provincial agreement. As the Board noted in the *Clarence H. Graham Construction Company Limited* case, this would lead to the mischief of establishing bargaining rights for trade unions bound by provincial bargaining with respect to employees who would be outside the realm of provincial bargaining. As the Board noted in paragraph 11 of the *Clarence H. Graham Construction Company Limited* case:

"It should be noted that section 131a(1) [now section 144(1)] says 'shall include all employees who would be bound by a provincial agreement'. Normally this would imply that the Board has the power to include employees other than those covered by the provincial agreement. In the present case, however, this becomes a matter of including in a *provincial* bargaining unit or series of bargaining units

employees covered by the regime of provincial bargaining, together with employees outside the provincial bargaining regime. Clearly, subsection 3 and subsection 5 of section 131a [now section 144] deal with matters relating to employees outside the regime of provincial bargaining and we propose to limit the appropriate unit in this case to only those covered by the regime of provincial bargaining. In so doing we are of the view that this is consistent with the provisions of the Act relating to the provincial bargaining. To certify the applicant in the present case for employees in the industrial, commercial and institutional sector in the construction industry, but outside the scheme of provincial bargaining, would create representation rights for trade unions within that scheme for employees outside the regime of provincial bargaining. Such representation would clearly be disruptive of the overall scheme contemplated in sections 125 [now section 137] to 136 [now section 151].”

We, therefore, are of the view that the appropriate bargaining unit is, as found in our previous decision, described in terms of all cement masons and cement masons’ apprentices.

The Board went on in that case to allow the applicant to carve out its craft from a broader existing bargaining unit.

16. We are also satisfied that the Board’s decision in *Reitzel* is neither inconsistent with the Board’s decisions in *Ellis-Don Limited* nor applicable to the applications before us. Paragraphs 27 and 28 of the *Reitzel* decision must be read in the context of the Board’s comments in paragraph 19 therein and in the context of the circumstances with which the Board was faced in that case; that is a non-craft construction industry trade union which is neither an employee bargaining agency nor an affiliated bargaining agent of one was applying to displace a craft construction industry trade union which is an affiliated bargaining agent of an employee bargaining agency. The applicant in *Reitzel* (the CLAC) had to make its application under section 144(5). It could not apply under either sections 144(1) or (3). When viewed in context, it is evident that the Board’s reference to its “general policy on displacement applications” in paragraphs 27 and 28 of *Reitzel* was made with respect to the policy apposite to the application before it; that is, one made by a non-craft trade union to which sections 144(1) through (4) of the Act do not apply. In these proceedings, the applications are by a craft trade union which is an affiliated bargaining agent and which has applied, as it is entitled to do, under section 144(1). The Board’s decision in *Reitzel* contemplates that craft carve out in the norm in such circumstances. We observe also that, in the result, the Board in *Reitzel* required the CLAC to seek to, in effect carve out part of an existing (province-wide) bargaining unit. Accordingly, even in *Reitzel* the existing bargaining unit was not found to be the appropriate one for the application. In balancing the various considerations, the Board sought to preserve the craft structure by not requiring the CLAC to seek certification for all trades at work on the date of application (and in doing so rejected the incumbent trade union’s submissions to that effect).

17. We are satisfied that the Board in *Ellis-Don Limited*, *supra* was correct when it concluded that it is the Board’s general practice to permit a craft construction trade union to apply and be certified for a bargaining unit of employees engaged in its craft whether or not such employees are in an existing bargaining unit of employees represented by another trade union at the time of the (timely) application.

18. That is not necessarily the end of the matter, however. The Board has fashioned a number of policies (or practices or "rules of thumb") in dealing with certification proceedings. No such policy can be any more than a general guideline. As such, it functions as much as a guideline for the labour relations community as it is a tool used by the Board. However, by the very nature of such policies, there will be limits of exceptions to them. No policy can either conflict with a legislation or be written in stone. Blind adherence to a policy laid down in advance is tantamount to a denial of jurisdiction (and is reviewable by the courts as such: see, *Re Testa and Workers' Compensation Board of British Columbia*, [1989] 58 D.L.R. 4 676 (B.C.C.A.) at pages 685 to 687). The Board must ensure that its practices and policies are both responsive to the real world of labour relations and that they are applied in appropriate circumstances.

19. On the other hand, policies or practices which have evolved over and stood the test of time should not be abandoned without some clear and compelling reason(s) to do so. To approach them indifferently would make them something other than policies and would create undesirable uncertainty in the community. It could also lead to protracted unnecessary litigation.

20. In short, there is a balance to be struck. While the Board cannot fetter its discretion in advance of a case before it, there is a value to consistency in the approach taken by the Board to the issues with which it regularly deals in applications for certification. While the Board must always be willing to examine its policies and their applicability to the cases before it, the Board should not abandon tried and true policies unless there is a cogent reason to do so.

21. Can the economy and the efficiency of an employer's operation be determinative of the appropriate bargaining unit? We think not. We observe that in many situations in which there is no existing bargaining unit (that is, no collective bargaining relationship) a respondent employer to an application for certification by a craft trade union may prefer a bargaining unit which is broader than the craft(s) represented by the applicant. In the construction industry, the Board finds, virtually without exception, the craft bargaining unit to be appropriate anyway. Similarly, as we have already noted, even in a displacement application in which an applicant craft trade union seeks to carve its standard craft bargaining unit of employees in the construction industry out of the broader existing one, the Board generally permits it to do so.

22. Can the possibility of labour relations problems dictate how a bargaining unit is to be structured? Again, we think not. To be sure, the Board should (and does) strive to avoid labour relations problems. However, that goal cannot become an absolute end in itself. Jurisdictional disputes, certain strike/picketing problems, strike induced lay-offs and other labour relations problems are an unfortunate but natural consequence of a craft based industry, which the construction industry in Ontario is. It is no answer, and in our view contrary to the structure of the construction industry provisions of the Act, to preclude a craft trade union from representing those employees engaged in its craft who are already represented by some other, non-craft, union. The race does not always go to the swiftest.

23. Though they are not determinative, neither are factors such as the economy and the efficiency of an employer's business or the possible labour relations consequences irrelevant to the Board's considerations in determining the appropriate bargaining unit in applications for certification like the two before the Board in these proceedings.

24. A substantial amount of the evidence before the Board in this case is in the form of an agreed statement of fact. The Board also heard the *viva voce* testimony of Alexander DeIulius, Chairman of the Ontario Form Work Association.

25. Upon considering the evidence presented and the representations made to the Board in



these proceedings, we find no substantial difference between them and the facts found and the arguments rejected by the Board in the decisions in *Ellis-Don Limited*, *supra* with respect to the carve out question. In addition to what is set out in the passages from the *Ellis-Don* decisions set out above, the evidence reveals that there are some 3,000 employees presently covered by a "Form Work Style Agreement", 2,000 of whom are employed by employers who are members of the Ontario Form Work Association. Forming contractors bound by a Form Work Style Agreement have performed virtually all of the concrete forming construction work in the high-rise portion of the residential sector of the construction industry in Metropolitan Toronto and vicinity (effectively Board Area 8). They have done so using members of the Labourers International Union of North America (several locals of which are constituent trade unions of the council) to perform all aspects of concrete forming construction which are relevant to our considerations (that is, the role played by members of Local 793 of the International Union of Operating Engineers is not relevant) without regard to the traditional craft distinctions between the labourers and, for example, carpenters, ironworkers, and cement masons. It is evident that the construction labourers so employed have performed the functions of such other crafts in this context. Under the Form Work Style Agreements, these "construction labourers" are divided into five "Groups". Group 1 consists of Form Builder - Setters. It is common ground in these proceedings that these Form Builder - Setters are, in effect, the carpenters or carpenters' apprentices with respect to which the applications herein have been made.

26. As in *Ellis-Don Limited*, *supra*, the assertion made to the Board in this case is that the members of a concrete forming construction crew exercises skills of more than one craft and are interchangeable each with the other. It is said that this creates a situation which is flexible, efficient and economic. Just as they may be an ICI "mind set" this appears to be the concrete forming construction mind set. Although it is not wholly inaccurate, it is not, upon close scrutiny, entirely accurate either. The evidence reveals that an "average" concrete forming construction crew consist of some 30 employees as follows:

- (a) 5 employees in Group 1 - Form Builder - Setters (i.e., the carpenters);
- (b) 7 employees in Group 2 - Reinforced Concrete Workers;
- (c) 16 employees in Group 3 - Form Helpers (i.e., the labourers);
- (d) 1 employee in Group 4 - Working Foreman;
- (e) 1 employee in Group 5 - layout man.

Mr. DeIulius testified that the exigencies of the real life form work job are such that certain delays (and time is money) would be inevitable if a form work contractor was unable to have employees in one group do the work of employees in another group as the need arose. However, he admitted that ideally each group of workers would specialize in certain tasks according to the group in which they are classified. He also admitted, and indeed it is self-evident, that Group 3 employees, taken as a whole, and who are the lowest paid and probably the least skilled employees in a form work crew, cannot perform all of the functions of a Group 1 employee, or an employee in any other group. It is clear that there is greater flexibility from Group 1 to Group 3 than vice versa, for example. Indeed, Mr. DeIulius admitted that a more skilled Group 3 worker can *sometimes* do *some* Group 1 work *if* he is adept at it, which suggest that there is very little flexibility from Group 3 to Group 1. The mere existence of different groups or classifications of employees, and rates of pay therefore, suggest that they are not all the same and that they do not exercise so similar a combination of skills as to be entirely interchangeable. In that respect, we find the comments in paragraphs

54 and 55 of *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254, *supra*, (set out above) to which emphasis has been added to be equally apposite to the applications before us.

27. Mr. DeIulius also testified that if Local 27 is permitted to carve out its craft from the existing bargaining units herein, the pricing (and therefor presumably the cost) associated with operating a concrete form work construction crew would increase by approximately 30%. It is not clear to us why that would necessarily be so. According to Mr. DeIulius, the number of Group 1 employees would likely have to increase from five to 10. But the number of Group 3 employees would likely decrease from 16 to 12 or 13. Mr. DeIulius assumed that the Group 1 employees (i.e., the carpenters) would be paid at ICI rates *and* that these rates would be higher than the rates paid under the Form Work Style Agreements. There is no evidence before us which suggests either that the ICI wage rates paid to carpenters or their apprentices are in fact higher than those paid to either Group 1 or Group 3 employees under the Form Work Style Agreements or of the extent of any such difference. Even if we accept those unsubstantiated assumptions, it is evident that Mr. DeIulius also assumed that the difference in costs that he estimated would be equivalent to the difference between the costs of an ICI job and a non-ICI job. In doing so, he included the difference in the cost of materials as well as the difference in labour costs (only 70% of the total differential is labour costs, leaving the differential for our purposes at approximately 21%, if we use Mr. DeIulius' estimate). Mr. DeIulius also agreed that the labour cost differential would be lower if some carpenters apprentices were used instead of carpenters. In making his estimate, Mr. DeIulius also included the earlier applicability of overtime premium rates for carpenters on ICI jobs compared to jobs in a residential sector (in Board Area 8). It is far from obvious that Local 27 would, if successful in these applications, be able to negotiate (for sectors other than the ICI) wage rates for carpenters and carpenters' apprentices employed by the respondents which are significantly higher than those already being paid to them. Even if it was, a judicious use of carpenters apprentices could substantially reduce the cost differential. In our view, Mr. DeIulius overstated what is likely to be the real difference in economy and efficiency which might result from permitting the carpenters carve out requested herein. Also, and significantly in our view, Mr. DeIulius admitted that any such difference was a bargaining issue rather than an unavoidable result.

28. It may be that it is more economic or efficient for employers to operate with crews in which the employees are not divided on the basis of craft. However, any differences and the manner in which the respondents can operate and any resulting changes in the economy or efficiency in their operation are more likely to be in degree than in kind and, as Mr. DeIulius admitted, are the sort of things which can be dealt with in collective bargaining.

29. It may also be that fragmentation of crews on a craft basis can lead to jurisdictional disputes, picketing problems, strike oriented lay-offs, and perhaps other labour relations problems. The Board recognized that in its decisions in *Ellis-Don Limited*, *supra*, and we recognize it here. Notwithstanding that, and as the Board also observed in *Ellis-Don*, the construction has shown such a great tolerance for fragmentation that fragmentation tends to be the rule rather than the exception in it.

30. In addition, the rights of employees to determine for themselves which, if any, trade union will represent them is fundamental to the Act. While no trade union has a monopoly on the right to represent any employees engaged in a construction industry, the Act does tend to create an oligopolic representation structure by precluding some trade unions from representing some such employees. More specifically, trade unions which are a designated employee bargaining agency or an affiliated bargaining agent of one can only represent in bargaining in the ICI sector of the construction industry those employees engaged in a craft or trade which such an employee bargaining agency has been designated to represent. However, just as this does not mean that trade unions

which are not an employee bargaining agency (or an affiliated bargaining agent or one) cannot represent such employees as well, neither does it preclude unions who are, and who are therefore governed by sections 144(1) through (4) of the Act, from displacing another trade union with respect to employees who they have been specifically designated to represent. Similarly, there are some overlapping designation orders. As *Duron Ottawa Ltd.*, *supra*, illustrates, a trade union designated to represent a craft which another trade union is also designated to represent can carve out that craft from a broader base bargaining unit represented by that other trade union. This again illustrates that the race does not irrevocably go to the swiftest.

31. In the result, we are satisfied that Local 27 has properly brought the applications for certification herein pursuant to section 144(1) of the Act. Further, we agree with the Board's reasoning in *Aero Block and Precast Ltd.*, *supra*, and are not persuaded that we should depart from the direction taken therein in these proceedings. We are satisfied that the Board's general policies of allowing a craft to carve out in the construction industry and of having the description of the non-ICI part of the bargaining unit mirror the ICI part of the description in an application under section 144(1) of the Act are applicable to these applications.

32. Accordingly, having regard to everything before the Board and pursuant to section 144(1) of the *Labour Relations Act*, the Board finds that all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that of the Town of Milton within the geographic Township of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining in both Board File No. 3168-88-R and Board File No. 0173-89-R.

33. The Registrar is directed to schedule these matters for hearing for the purpose of hearing the evidence and representations of the parties with respect to all matters remaining in issue in any of them.

#### **DECISION OF BOARD MEMBER J. LEAR; December 6, 1989**

1. I dissent.

2. This is a situation in which there is no "right" decision, only one which is "better" than its alternative. The "better" decision has to be determined not by reference to legal authorities, which exist on both sides of the argument, but rather by a studied analysis of the benefits and the detriments which would accrue to each of the opposing groups and, more importantly, to the members they represent.

3. While the decision sets out, fairly and honestly, the arguments for allowing and for not allowing the applicant's claim, I believe that its main thrust, as written, is to demonstrate that a "carve-out" of a unit of employees is permitted by the Act and by Board practice. This conclusion is then used to justify the decision that the applicant should be permitted to carve-out Carpenters and Carpenter Apprentices from the present bargaining unit covered by the Form Work Council Agreement.

4. In my opinion, the decision should concentrate on examining the broader issues of what will be achieved by allowing such a carve-out, and what will be lost as a result.



5. There must be a good deal of sympathy for the applicant's right to represent members of its own craft and, as pointed out in paragraph 30 of the majority decision:

...the rights of employees to determine for themselves which, if any, trade union will represent them is fundamental to the Act.

This is the sole, though vital, point in favour of allowing the carve-out.

6. Against this, though paragraph 50, *Ellis-Don Limited*, (1988) OLRB Rep. Dec. 1254 states:

Local 27.....has no history of organizing at all comparable to that of Local 183 and the Form Work Council within the residential sector in Board Area 8.

During the hearing, counsel for the respondent Automatic Structures Ltd. referred to the total lack of evidence of any organizational activity on the part of the Carpenters' union in the residential sector.

7. Several attempts in the mid-1960's by a council of unions, including the Carpenters' union, to organize in the residential forming field were short-lived and unsuccessful. It was left to Local 183 to develop the enterprise which evolved 20 years ago into the present Form Work Council, an all-trades bargaining unit. It is fair to say the Council has enjoyed success and is acknowledged in the residential concrete forming sector as the prime organizational force. There appears to be no question that all members, including Carpenters and Carpenter apprentices, have been properly represented by the Form Work Council.

8. Given this background of previous non-involvement by Local 27, and a long history of successful control and quite harmonious relationship, one has to wonder what will be gained by approving a carve-out? Local 27 will be able to represent its members directly in the residential concrete forming area. Will those members benefit as a result? Perhaps, or perhaps not. Will the carve-out result in more rigid lines being drawn between trades in the residential concrete forming field, destroying the traditional interchangeability and inter-dependence among crew members, and creating more trade disputes? Almost certainly. The potential threat is there, reinforced by the statement of counsel to Local 27 during the hearing that the Carpenters would claim scaffolding, now the work of form helpers.

9. There is no doubt of the interchangeability of and inter-dependence among members of the concrete forming crew although, as pointed out in paragraph 26 of the majority decision, there is not a complete interchangeability, for a Group 3 employee (the least skilled):

... cannot perform *all* of the functions of a Group 1 employee, or an employee in any other group. (emphasis added).

This apparently negative statement is, in fact, a very positive testimony to the value of a composite crew - it means that a Group 3 employee can nonetheless perform *some* of the functions of a Group 1 employee. Surely this is an argument for maintaining, not destroying, the present system? It proves that totally unskilled workers who have the native ability to develop further skills, but never had an opportunity to do so, are able to improve their experience and their earning power as members of a forming crew. This is a very real consideration which should be given weight in the decision. The construction industry is replete with examples of individuals with limited training who have risen to positions of seniority and authority.

10. The decision points out (notably paragraph 10, quoting paragraphs 39 and 40 of *Ellis-Don Limited*) that the Board's attitude to carve-out of craft units in construction is different from its approach to industrial units i.e. the Board will normally sever a craft unit in construction, but not in the industrial area. While this establishes a practice for construction, it does not necessarily set out an inflexible position. There are obviously good reasons for the two different approaches.

11. The typical industrial unit is in a permanent location and brings together at one time a relatively constant mixture of people of different skills and/or trades working together under the same roof (figuratively speaking) and usually forming part of a progressive and complementary process.

12. By contrast, the typical construction site is temporary, relatively short-term in operation and brings together at different times a constantly changing mixture of people of different skills and/or trades, often working in isolation from each other in different and unconnected areas of a widespread work site and, though part of a final complementary process, likely to have moved on when the next part of the process they took part in has begun. Specialist craftsmen, e.g. electricians, plumbers, in one work week may work on 3 or 4 different job sites and under sub-contract to as many prime contractors, particularly in residential housing. The still "casual" nature of construction is reflected in the high labour turnover experienced in the industry.

13. A concrete forming crew is by nature and composition more like an industrial unit than a typical construction unit. Members of the crew are inter-dependent, grow to understand each other's methods of working, and often try to stick together as a team, while the good employer attempts to keep them that way too, often transferring them as a group to a new site. This factor also deserves to be given weight in the decision.

14. The old adage "If it ain't broke, don't fix it", does not suit every situation, like most sayings of its kind. In considering this application, however, it seems to be most singularly appropriate. When the present system works so well, there is absolutely no value in abandoning it in favour of a system much less efficient and economic and one which may well create a great deal of labour strife.

15. The preamble to the Labour Relations Act states:

...it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees...

The majority decision states in paragraph 10, (quoting from the *Ellis Don* decision):

48. ...the Board and its practices and policies, must be responsive to developments in the real world of labour relations. *The Board should be sensitive to such changes so that its policies and practices can evolve to accommodate them* rather than requiring the labour relations community to adapt to the Board. (emphasis added)

50. ...*Form Work and Form Work style agreements.....* have, on the evidence before the Board, adapted to the needs of and changes in the construction and as such *have worked to the benefit of both employers and employees covered by them* (emphasis added)

Also, in the majority decision are these statements:

19. ...policies or practices which have evolved over and stood the test of time should not be abandoned *without some clear and compelling reason(s) to do so.* (emphasis added)

20. ...the Board *should not abandon tried and true practices and policies* unless there is a cogent reason to do so. (emphasis added)

16. I believe the considerations given to permitting Local 27 to carve out its craft have been allowed to overshadow the real point at issue, which is one where a long-established, successful and quite harmonious relationship in residential concrete forming stands to be sacrificed, creating the potential for trade disputes and disruption of work, in order that Local 27 may represent its members in this sector, which it has chosen to ignore for many years.

17. In my opinion, the reasons for allowing the applications are not in themselves of sufficient weight to risk the possible consequences. Therefore, I would reject the application of Local 27 to carve out Carpenters and Carpenter Apprentices and would allow Local 183 to continue to cover these employees through the Form Work Council Agreement.

**3052-88-R** Retail, Wholesale and Department Store Union, AFL:CIO:CLC:, Applicant v. **U-Need-A Cab Limited**, Respondent v. 751341 Ontario Ltd., operating as M & M Holdings, and M & M Auto Centre South End Cab Inc., Interveners

**Bargaining Unit - Certification - Union seeking to represent group of drivers owning neither car nor plate - Employer arguing unit of all dependent contractors more appropriate - Board affirming more than one unit may be appropriate - Unit proposed by union having distinct community of interest - "Pure driver" units recognized elsewhere and not causing serious bargaining problems or prejudice to public interest - Board accepting unit proposed by union**

**BEFORE:** R. O. MacDowell, Alternate Chair, and Board Members R. W. Pirrie and P. V. Grasso.

**APPEARANCES:** J. K. A. Hayes for the applicant; G. W. King for the respondent; John H. McNair for the interveners.

**DECISION OF THE BOARD;** December 14, 1989

# I

1. This is an application for certification made pursuant to section 9 of the *Labour Relations Act*. It is the latest in a series of applications over the last few years in which the union seeks to represent persons who drive "under the banner" of municipally regulated taxi companies. The union has requested and the Board has directed that a representation vote be taken in the following voting constituency:

all drivers of taxi cabs under the "U-Need-A Cab" roof sign in the City of London, save and except, road chief supervisors, those above the rank of road chief supervisor, dispatchers, maintenance staff, office and clerical staff, those who either own or lease a licensed plate and those who either own or lease a car.



In effect, the union seeks to represent a group of individuals who might be described as “pure drivers” - that is persons who supply only their labour in the service of the respondent’s customers, and do not own either a car or the “plate” which permits its use as a taxi cab.

2. In accordance with the Board’s direction, a vote was ordered and drivers were asked to indicate, by secret ballot, whether or not they wish to be represented by the applicant trade union. The ballot box has been sealed pending the resolution of a number of outstanding issues between the parties. Among those issues is the description of the bargaining unit.

3. The union takes the position that the above-described voting constituency also represents a unit appropriate for collective bargaining. The respondent and the intervener disagree. They submit that the bargaining unit should encompass all “dependent contractors” working “under the banner” of the respondent in London, Ontario. Their proposed unit is therefor, much broader. They would include with the “pure drivers” various categories of “owner operator” who own or lease cars and/or plates which they then use, as part of the respondent’s fleet, to service its customers in much the same way as the drivers do. The respondent submits that all of these individuals are its “dependent contractors” (see sections 1(1)(h) and 6(5) of the Act) and should therefore be grouped together in one unit for collective bargaining purposes.

4. Counsel for the interveners submits that there are significant disputes with respect to the facts, and it is not at all clear who are the “employees” and the “employers” in this case. He argues that even if all of the drivers and owner operators with n the fleet are dependent contractors, as the respondent submits, there is no reason to subdivide them into different bargaining units. The interveners note, pointedly, that they have been named as respondent in certain section 89 complaints where their liability could turn on whether they were the “employer” of the “employees” under review. Counsel observes that the union seems to be taking the position that his clients are “the employer” for unfair labour practice purposes, while at the same time asserting that the respondent is the employer for certification purposes. Counsel further notes that there is no application under section 1(4) of the Act for a declaration that these various business entities should be considered to be one employer for the purposes of the Act.

5. The union replies that a grouping of “pure drivers” is appropriate for collective bargaining, even if some more broadly based bargaining unit would also be appropriate. The union relies upon the decision in *Hamilton Yellow Cab*, [1987] OLRB Rep. Nov. 1373 where the Board subdivided working drivers into “pure drivers” who supplied only their own labour, and those who had a greater stake in the company’s organization by reason of their personal investment in a car, plate, or both. The union contends that separate units have been accepted in the past in other Municipalities (see for example *Windsor Airline Limousine Services Limited*, [1981] OLRB Rep. Mar. 398) without obvious collective bargaining problems for the parties involved, and asserts that a “pure driver unit” is a sensible subdivision of the respondent’s fleet even though there may also be a case for a broader bargaining unit. Indeed, the union concedes that a comprehensive unit of all owner operators and drivers might also be appropriate. But the unit it seeks is appropriate too. The union urges the Board to open the ballot box and act upon whatever the drivers, by a majority, have indicated.

## II

6. We do not think it is necessary to burden these reasons with an analysis of the term “dependent contractor” which the Legislature added to the statute in 1976 in order to extend collective bargaining rights to economically dependent individuals whose “employee status” at-common-law, might otherwise have been in doubt. That question has been explored, at some length, in earlier “taxi cases” such as *Blue Line Taxi Co. Ltd.*, [1979] OLRB Rep. Nov. 1056; *Windsor Airline*

*Limousine Service*, [1981] OLRB Rep. Mar. 398; *Hamilton Yellow Cab Co. Ltd.*, [1987] OLRB Rep. Nov. 1373; and, most recently in *Airline Limousine*, [1988] OLRB Rep. Mar. 225. However, since the focus of the parties' current dispute is the description of the bargaining unit, it may be helpful to reiterate the Board's general approach to such questions. A good place to start is the following long passage from *Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266 where the Board had this to say:

12. Prior to the passage of collective bargaining legislation in the early 1940's, there was no prescribed mechanism for the acquisition of bargaining rights. If a group of employees sought to form or join a trade union, and if they had sufficient bargaining power, they were able to compel their employer to meet and bargain. However, the only means of achieving recognition was to threaten a strike. A union had no statutory right to bargain on behalf of its members, and no statutory obligation to represent anyone else. Even if a bargain was struck, the agreement was not, in itself, a binding and enforceable contract. Its enforceability depended upon the parties' economic strength.

13. In 1943, borrowing from American experience, the Legislature passed the *Ontario Collective Bargaining Act* (S.O. 1943, c.4). The new legislation provided a process whereby a trade union could become the exclusive bargaining agent for the employees in a "unit of employees...appropriate for the purposes of collective bargaining" which could be an "employer unit, craft unit, plant unit, or a subdivision thereof" (see section 13(5a)). Over the years, that language has not changed very much. ...

14. It will be seen that the statutory language has remained basically unchanged for more than four decades, and in the early years it provided the basis for making broad distinctions for bargaining unit purposes between such groups as: "white collar" office and technical employees, and "blue collar" production employees; skilled tradesmen (electricians, plumbers, sheet metal workers, etc.), and unskilled or semi-skilled workers; part-time employees and full-time employees; employees working for an employer in one plant or municipality and employees in another plant or municipality; and so on. However, these fairly simple, and then unexceptional distinctions, do not apply so easily today. Collective bargaining has extended beyond its traditional "blue collar" industrial base, into the public sector and to increasingly sophisticated and diverse job hierarchies. Real life collective bargaining experience has outstripped some of the conventional wisdom and has shown that the collective bargaining system can exhibit quite a variety of structures, which, at one time, parties might have considered unconventional or inappropriate. Ontario Hydro, for example, has a province-wide bargaining unit, encompassing a broad range of employee classifications, and thousands of employees, ranging from unskilled workers to highly trained technicians. A typical municipal "inside workers" (white collar) bargaining unit may include occupations ranging from filing clerks, to computer programmers, economists and planners with a considerable amount of post-secondary or even graduate training [see the Board's decision in *The Regional Municipality of Durham*, Board File 1818-84-R, decision released November 20, 1984]. The Ontario Civil Service bargaining unit contains thousands of employees ranging from clerks and typists to sophisticated scientific and technical personnel - and, incidentally, the staff of a number of provincial psychiatric hospitals (see: *Owen Sound General and Marine Hospital*, [1978] OLRB Rep. May 445, where the Board noted that in the government sector nurses, paramedicals, service employees, and clericals are all in the same unit, even though under the *Labour Relations Act*, they have typically been segregated into separate units). While at one time common opinion and industrial relations practice might have supported fairly rigid (almost "class") divisions between employee groups, modern collective bargaining seems to be able to thrive quite well in many contexts without such rigid distinctions. It is no longer as easy as it once was to say that it is "inappropriate" to group together for collective bargaining purposes, employees with quite diverse skills, education, training, position in the job hierarchy or probable aspirations.

15. Now obviously, the determination of the appropriate bargaining unit has immense practical and tactical significance. The unit determines the constituency within which the union must establish majority support if there is to be any collective bargaining at all. To put it another way, the unit determines the group of employees whose support must be solicited by their fellows if the objective of collective bargaining is to be achieved. A union cannot seek certification solely for those who have opted to join it. It is required by law to establish majority support in what

*this Board* determines is an appropriate unit, and that may not be so easy to predict - as the present case indicates. Moreover, to the extent that the contours of the bargaining unit are unclear, there will be uncertainty about precisely how employees should go about organizing themselves in order to conform with what the law may require. There will also be the prospect of litigation, cost, and delay which may prejudice both the applicant union and the employees it seeks to represent (see the remarks of Laskin, J.A. in *Nick Masney Hotels Limited*, (1970) 13 D.L.R. (3d) 289; 70 CLLC ¶14,010; and those of Estey J.A. (as he then was) in *Re Journal Publishing Co. of Ottawa et al.*, and *Ottawa Newspaper Guild et al.* [1977] 1 ACWS 817). Cost and delay will also be of concern to the employer, and to employees whose wages may be temporarily "frozen" by section 79 of the Act even if they are ultimately excluded from the bargaining unit. The situation is exacerbated in the instant case where the bargaining unit is large, and both parties have experienced some difficulty determining the precise perimeter of the unit, and how (if at all) it can be meaningfully and consistently distinguished from the lower levels of employees working nominally (in the employer's terms) in "technical" job classifications.

16. Ideally, the determination of the bargaining unit should involve an informed exercise of the Board's judgement, based upon objective criteria, industrial relations experience, and a sensitivity to the statutory objects. Ideally, it should be a dispassionate enquiry focusing on what is sensible, workable and, in short, "appropriate". However, the Board cannot ignore the fact that in an adversarial model, unions and employers may both be tempted to frame their submissions with an eye to advancing, delaying or avoiding the objective of collective bargaining. That was an undercurrent in both parties' arguments from time to time. A union may seek to tailor its proposed unit in terms of its established supporters. An employer may seek to exclude pockets of likely union supporters, or argue for the inclusion of those whom the union may not have organized, or who are unlikely to have been receptive. An employer may even be tempted to raise bargaining unit issues as a means of delaying the certification application and interrupting the momentum of the union's organizing drive - particularly if there is to be a representation vote. A graphic example of these pragmatic/tactical considerations can be found in *York Steel Construction Limited*, [1980] OLRB Rep. Feb. 293, where the union initially sought a unit covering only the larger of two plants which an employer operated in a municipality. The employer asserted that the bargaining unit should cover both plants. Following a representation vote, it became known that the ballots cast in the larger plant gave the union a sufficiently wide margin that it could obtain bargaining rights for *both* plants, regardless of how the smaller plant had voted. The parties promptly reversed their positions. Such purely tactical considerations merely complicate the Board's task in particular cases.

17. Given that the definition of the bargaining unit can materially affect the ability of employees to organize, and that uncertainties concerning its contours can provoke costly litigation and potentially prejudicial delay, what then is the purpose of the concept of the "appropriate bargaining unit"? Quite simply, it is an effort to inject a public policy component into the initial shaping of the collective bargaining structure, so as to encourage the practice and procedure of collective bargaining and enhance the likelihood of a more viable and harmonious collective bargaining relationship. That objective is spelled out clearly in the Preamble to the Act. While the requisites for effective collective bargaining cannot always be defined with certainty, may necessitate a balance of competing collective bargaining values, and may, in any event, turn on factors beyond the Board's control, the discretion to frame the "appropriate" bargaining unit during the initial organizing phase provides the Board with an opportunity (albeit perhaps a limited one) to avoid subsequent labour relations problems. Now, of course, this is not necessarily the same thing as minimizing administrative problems for the employer or organizing problems for the union. The structures and policies that promote a maximization of the employer's business interests are not those that will necessarily describe a viable bargaining unit, or the only viable bargaining unit - particularly since those interests may include a desire to avoid collective bargaining altogether, or limit its effectiveness. The employer's administrative structures are relevant in determining the bargaining unit, but they are not necessarily to be taken as the conclusive blue print in deciding what is appropriate. ...

After reviewing a number of cases and some of the potential factors which could bear upon the Board's decision about the "appropriateness" of a particular bargaining unit, the Board made this further comment:



23. We might make an additional but related observation. We are troubled by the fact that a largely administrative and policy-laden determination has mushroomed in some cases into an elaborate, expensive, and time-consuming process for deciding a relatively simple question: *does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer.*

[emphasis added]

7. There was nothing particularly new or startling about these views. Similar opinions had been expressed ten years before in *Ponderosa Steak House Limited*, [1975] OLRB Rep. Jan. 7 (at a time when the concept of "freedom of association" had no Constitutional underpinning):

10. A primary theme set out in the *Labour Relations Act*, and affirmed by the Board, is the principle of freedom of association. The preamble to the Act makes it clear that it is the intention of the Legislature to encourage collective bargaining "between employers and trade unions as the freely designated representatives of employees." More specifically, section 6(1) of the Act expressly provides that the wishes of the employees as to the appropriateness of the unit are to be considered by the Board. In other words, the Act recognizes that it is desirable that employees be able to organize in a form that corresponds with their own wishes. Given this legislative policy favouring the right of self-organization, the Board must be careful that its determination as to the appropriateness of the bargaining unit has given proper weight to the wishes of the employees. An earlier decision of the Board, *The Board of Education for the City of Toronto*, July OLRB Monthly Report 430, clearly endorses such an approach. In giving due consideration to the wishes of the employees, the Board, in the absence of contrary evidence must assume that their wishes are expressed by the applicant union as the representative of the employees. This point was made by the Board in *Board of Health of the York-Oshawa District Health Unit*, 1969 June OLRB Monthly Report 340.

11. The right of self-organization, however, must at times compete with the need for viable and harmonious collective bargaining. Section 6 of the Act specifically requires the Board to determine, not just a unit of employees, but "the unit of employees that is appropriate for collective bargaining." In other words, the Board has a responsibility under the Act to create a rational and viable collective bargaining structure, even though the exercise of this responsibility may sometimes conflict with the right of self-organization. This responsibility was recognized by the Board in the *McMaster University* case, 1973, February OLRB Monthly Report 103, and in the *Board of Education for the City of Toronto* case, *supra*.

12. The determination of what constitutes a viable collective bargaining structure requires the Board to consider matters of industrial relations policy, such as community of interest and fragmentation of employees. Community of interest may be a requisite for viable collective bargaining, since the representation of disparate employee groups by one bargaining agent may put impossible strains upon it as it performs its role in the bargaining process. At the other extreme, a too narrow definition of community of interest may create undue fragmentation of employees, leading to a weak employee presence at the bargaining table, or the possibility of jurisdictional disputes among competing bargaining groups. It should be observed, however, that the Act does not create any presumption in favour of the most comprehensive unit of employees, even though these employees may have a community of interest. Section 1(1)(b) of the Act states that: "bargaining unit" means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or a subdivision of either of them." This provision makes it quite clear that the determination of appropriateness does not always lead to the conclusion that the most comprehensive unit is also the most appropriate unit. Consideration of the wishes of employees, and of industrial relations policy, may very well dictate that a smaller bargaining unit is the appropriate unit. This point was clearly made in *Board of Education for the City of Toronto* case, *supra*.

8. Finally, there are two other cases that are worthy of brief mention: *Canada Trustco Mortgage Company*, [1977] OLRB Rep. June 330, and *K Mart Canada Limited*, [1981] OLRB Rep. Sept. 1250. In each case, the union sought to represent a bargaining unit of employees work-

ing in a particular branch or location of the employer's operation, and the employer argued that the only appropriate bargaining unit should encompass a much larger group. There, as here, an acceptance of the employer's position would have resulted in no collective bargaining at all; and while, obviously, neither case involves taxi drivers, they are significant for our purposes because they reiterate that in given circumstances, there may be more than one appropriate bargaining unit. In *Canada Trustco* for example the Board noted that:

It is also possible, of course, that different communities of interest will exist at one and the same time among several different groupings of employees. Obviously certain common employment interests exist among all employees of the respondent in Canada; the portion of those employees who are within Ontario have a further common interest; and the group of employees working under the direction of the London regional office have employment interests in common that they do not share with their fellow employees elsewhere in Ontario or in Canada at large. The question is whether a separate community of interest, based on day to day dealing with their vital job interests, is found among employees at the branch at Simcoe.

The Board went on to find that a single branch of Trustco was an appropriate bargaining unit and, therefore, the union's application could proceed even though a larger grouping might also be appropriate. Similarly in *K Mart*, the Board held that a single store would be an appropriate bargaining unit even though a unit consisting of all stores in Metropolitan Toronto would also be appropriate.

9. In both cases the Board noted that the process of bargaining unit determination should not be administered so as to unduly impede employee access to collective bargaining. A trade union should not be denied the opportunity to represent an appropriate subdivision of employees, even though some other subdivision, broader or narrower might also be appropriate. That approach is consistent with the spirit of section 3 of the Act which guarantees "persons" the freedom to join a union and participate in its lawful activities.

10. This is not to say that any and all bargaining unit configurations are appropriate. Fragmentation of the bargaining structure into many bargaining units - perhaps represented by different unions - can lead to collective bargaining difficulties and discord (see for example the Board's analysis in *Kidd Creek Mines Ltd.*, [1984] OLRB Rep. Mar. 481 and *Stratford General Hospital*, [1976] OLRB Rep. Sept. 459). A patchwork quilt of bargaining units is a recipe for industrial unrest - if only because in an integrated enterprise it takes only one collective bargaining breakdown to start the whole system unravelling. But, by the same token, the more disparate the interests enclosed within the unit, the more difficult it may be for the union to effectively represent the collectivity. It is a matter of judgement and balance.

11. What are the "problems" that the respondent identifies as flowing from the creation of a pure drivers unit? Its workforce would be divided into at least two bargaining units and perhaps one or two others depending upon how one treats office staff should they ever indicate any appetite for collective bargaining. That would be inconvenient. But it would be no different from most other organized industrial enterprises where blue collar and white collar employees are typically divided between part-time and full-time workers creating a minimum of four bargaining units, and hospital employees are divided into part-time or full-time units of service workers, technical workers, and office workers. The Board's inclination is not to multiply the number of bargaining units, but the collective bargaining reality is that there are many situations where its own policies (particularly separating full-time and part-time workers) have done just that, and there is little empirical evidence that collective bargaining has suffered for it. Similarly, as we have already mentioned, there are many examples of very large bargaining units, encompassing quite different employee groupings without obvious evidence of collective bargaining difficulties, and some very small units (registered nurses in a nursing home for example), that seem to survive. The unit proposed by the

union here is neither irrational, nor ever accepting the employer's best case, likely to be unduly disruptive to its labour relations.

### III

12. In the instant case there are many facts in dispute, but the fundamental fact, in our view, is that: the owner/operators, plate lessees, car lessees, etc. have a different stake or interest in the respondent's organization than those drivers who simply supply their labour. The "pure drivers" are dependent for their livelihood not only upon the respondent but also upon others in its system. Their access to work opportunities depends not only upon the respondent but also upon owner/operators, lessees, etc. for whom they work to fill in for the times that the principle player is not operating the car. There is no question that the "pure drivers", as we have described them, are in a different position from other working drivers in the respondent's fleet, and to that extent, have an identifiable community of interest. The question for us is whether, because of that, the "pure drivers" comprise an appropriate bargaining unit.

### IV

13. In *Hamilton Yellow Cab supra* the Board concluded that the owner/operators with a quasi-entrepreneurial stake in the taxi organization, had a different community of interest from the drivers who worked with them under the "Yellow banner". At paragraph 58 the Board said this:

58. There is also some evidence that the fill-in drivers may have a different community of collective bargaining interests from the full-time owner-operators. If Yellow ultimately controls the fund of available work opportunities, the owner-operators also have a measure of control over the distribution of those work opportunities which they consider to be surplus. An owner-operator may decide to fill in the open spots in his schedule with one helper or three, and is theoretically free to strike a different bargain with each of them. The drivers remain ultimately responsible to Yellow for their performance on the job, but the owner-operator has a degree of control or influence over their job prospects - not least because if the owner-operator is in some way dissatisfied or chooses to work longer hours, s/he can terminate the relationship forcing the driver to look for work elsewhere. Similarly, (although there is no actual evidence to this effect) an owner-operator may admonish a driver for conduct deemed unacceptable (particularly if Yellow expressed that opinion) and could conceivably sever his relationship with a driver for that reason. Finally, the evidence does suggest that owner-operators may provide on-the-job training for new drivers (subject to rules established by Yellow) which may involve some measure of performance assessment.

The point is that these drivers are, to some degree, dependent on both the owner of the "tools equipment or other earning assets", but also dependent upon the ultimate source of work: the taxi company. The Board concluded that it was reasonable to segregate the "pure drivers" in a separate bargaining unit. It could not mix employees and dependent contractors without the consent of the latter, but in any event, they had a different community of interest.

14. The problem of mixing individuals with different and potentially conflicting collective bargaining interests is amply illustrated by the situation before the Board in *Chinook Chemicals Company*, [1989] OLRB Rep. Oct. 1021. There, an owner-operator of a truck was in the same bargaining unit as his fill-in driver. The union representing that bargaining unit proposed certain collective agreement terms which were advantageous to the fill-in driver but not to the owner-operator of the truck. Not surprisingly, the owner-operator told his driver that if he supported the union's position he might be out of a job because the economic situation would induce the owner-operator to spend more time driving himself. The legal result in this unfair labour practice case does not really matter; but the case clearly illustrates that there can be a significant difference in community of interest or collective bargaining objectives between persons who have an economic



stake by asset purchase, lease or otherwise in an economic organization, and those who supply merely their labour. There are degrees of dependence and the lines of dependence may run not only to the ultimate supplier of work opportunities, but also to other intermediate parties. And that may be inherent in the “hybrid” legal construct: the dependent contractor.

15. In the instant case the union contends that the pure drivers are properly grouped in a separate bargaining unit because they have a different community of interest from other working drivers. The union points to *Hamilton Yellow Cab* where that subdivision was made, and to other Ontario cities where unionized cab drivers have been subdivided along those lines. The union asserts that there is nothing in the facts alleged by the other parties to suggest that its bargaining unit is not appropriate other than the respondent's concern about dealing with two or three bargaining units rather than one. The union argues that we should accept the voting constituency as established, find it to be an appropriate bargaining unit and get on with the case: open the ballot box and see whether the drivers want to be represented or not.

### Decision

16. We agree with the union's position. Having read the statement of facts submitted by the parties, and noting the disagreements, we accept the union's proposition that a unit of “pure drivers”, as it describes them, is appropriate for collective bargaining. Such unit has been found to be appropriate in the past, exists in the collective bargaining world, and has not, to our knowledge, caused serious collective bargaining problems or spill-over affects prejudicing the public interest. We make such determination, assuming, without finding, that the facts asserted by the respondent and intervener are correct, and noting their quarrel with the facts asserted by the trade union. In this unique and in some ways unusual legal and economic context, we are persuaded that the union's proposed bargaining unit is appropriate, and that being so, if the list is settled the ballots may now be counted.

17. We do not decide whether the interveners are “employers” for collective bargaining purposes or might be so regarded if an application were made pursuant to section 1(4) of the Act. No section 1(4) application has been made and we need not comment further.

---

## **1075-89-R Canadian Union of Public Employees, Applicant v. Vaughan Public Libraries, Respondent**

**Bargaining Unit - Certification - Employer requesting twenty hour cut-off for full-time unit to reflect workplace distinction between permanent and casual employees - Union requesting twenty-four hour cut-off and citing reliance during organizing on Board's twenty-four hour “rule” - Board not fettering discretion in taking into account labour relations community's interest in consistency and predictability - Board considering reliance interests, right of self-organization, potential for gerrymandering, lack of agreement between parties - Terms of employment often unilaterally imposed by employer and may not be reliable indicators of community of interest - Effect of employer's request disenfranchisement of casual employees - Standard division not causing serious labour relations problems - Facts not sufficiently exceptional to warrant departure from normal practice**

**BEFORE:** K. G. O'Neil, Vice-Chair, and Board Members W. A. Correll and E. G. Theobald.

**APPEARANCES:** *Gilles Lebel* for the applicant; *Charles Robertson* and *Sylvia Hall* for the respondent.

**DECISION OF THE BOARD;** December 22, 1989

1. This is an application for certification for a full-time bargaining unit in which the parties have agreed on all issues in dispute except the description of the bargaining unit. The employer challenges the Board's practice of using twenty-four hours or less as the dividing line between full-time and part-time bargaining units and asks that the Board apply a line of twenty hours instead, the line it uses to separate permanent and non-permanent staff. The union relies on what it calls the "five-decade practice" of the Board and the fact that it organized in accordance with it to request the usual dividing line between full-time and part-time: the exclusion of persons regularly employed for not more than twenty-four (24) hours from the full-time unit it seeks to represent.

2. The only evidence called was that of Sylvia Hall, Chief Executive Officer and Chief Librarian of the Vaughan Public Libraries. A summary of the relevant facts follows. Within the five branches which make up the Vaughan Public Libraries are three categories of workers recognized by the Board of Directors in its personnel policy: permanent full-time, permanent part-time and casual. The casual group is also sometimes referred to as part-time or non-permanent staff. The category of casual (part-time) is currently defined as those people who work twenty hours or less per week. Those who work between twenty and thirty hours a week are referred to as the permanent part-time staff by the employer. Permanent full-time staff are defined as those who are working a regular full-time schedule of thirty-one to thirty-five hours per week. Before 1985, the cut-off between permanent and casual was eighteen hours, which represents approximately half of the usual full-time work week of thirty-five hours. The change occurred because the employer wished to start benefits for part-time staff; the insurance company did not wish to provide benefits for people working less than twenty hours.

3. There is also a category of non-permanent staff known as contract staff who are hired for specific projects, or to work on Sundays. When permanent staff work on Sundays it is a premium day but the norm is that Sunday is staffed by people on contracts specifically for that purpose. Contract staff are paid an agreed on rate and casuals an hourly rate. Short term assignments to contract staff may involve more than 20 hours per week; nonetheless, the employer does not consider them permanent staff.

4. The employer's current personnel policy provides benefits and vacation policies for members of permanent staff in a similar manner, but not for the non-permanent staff. For instance, permanent part-time staff have the vacation and benefit packages applied to them on a percentage basis and the non-permanent staff do not have it applied to them at all. The permanent staff undergo annual appraisals after a six-month probationary period during which there are three appraisals. There is no such system for the non-permanent staff. Permanent vacancies are posted in the branches; non-permanent ones are posted in groceries stores and on public notice boards. Permanent part-time staff have the same responsibilities as full-time staff, only working fewer hours. Non-permanent staff are assigned routine tasks and are not required to have any significant educational or experiential qualifications other than being adults. They are usually students or people who want a few hours of work in the morning. Permanent part-time staff are paid an hourly rate derived from the salary structure applicable to permanent full-time staff. Non-permanent staff are paid a flat hourly rate. Permanent part-time staff often replace permanent full-time staff. The library has not had a situation in which a part-time employee was working full-time hours for long enough to affect benefits' status. Non-permanent staff normally only replace each other. All permanent staff, full-time or part-time, must book leaves of absence and vacation; non-permanent

staff are able to merely indicate unavailability during those periods. Only permanent staff receive continuing education and professional development funding. Permanent staff have labour grades assigned to them; non-permanent staff do not.

5. The employer presented several "case studies" to illustrate why it considers the twenty-four hour cut-off to be inappropriate for its workplace. This was done by way of comparison of job descriptions of various employees who would be in and out of the bargaining unit if the applicant's proposal was granted as the appropriate bargaining unit.

6. Case study no. 1: two job descriptions were compared, each bearing the job title, Circulation and Serial Clerk in the Technical Services Department, one working twenty-four hours a week and one working twenty-five hours a week in the same branch reporting to the branch head. Both are permanent part-time employees under the current personnel policy. They both bear labour grade 1, a determination based on a job evaluation plan using factors such as knowledge, skill and level of responsibility. The difference in hours merely depends on the need of the branches or the department and the level of activity anticipated throughout the year. The tasks of the two employees are not identical, but are very similar. The jobs include mailing and routing of print materials and linking of non-print materials. They have the same level of responsibility. The main difference in the two jobs appears to be the frequency and regularity with which the clerks route telephone calls and messages.

7. Case study no. 2: the job descriptions of two Branch Assistants - Children, labour grade 4, were compared. One works twenty hours, the other twenty-eight hours, in different branches, reporting to the branch head. The difference between the two positions reflects the needs of the branch and not the position. One branch has more children's programs and therefore needs more hours as it serves a larger area. The tasks include public service desk duties such as charging and renewing books, and answering patrons' inquiries as well as duties relating to the planning and development of the children's program.

8. Case study No. 3: this compared the job descriptions in case study no. 2 to a full-time branch assistant in children services in a third branch. The labour grade of the positions is the same but the full-time job is more complex because of the level of activity of the branch. The full-time position reports to the children services librarian as well as to the branch head. Three to four years experience rather than two to four are required for the full-time position because of the complexity of the branch. The librarian commented that although there is more activity in the full-time job there is also more staff in that branch. Therefore the level of responsibility of the job is no higher because of a more complex staff structure in the bigger branch. The full-time job description does not include the more routine public service desk functions listed in the part-time positions in Case study no. 2

9. Case study no. 4: the comparison of four job descriptions of clerks in the acquisition and processing area of technical services. Two are permanent part-time positions of twenty-four hours and two are full-time positions. They all bear labour grade 1. Although the job titles are not identical, they all work in the same section with similar duties and report to the same department head. In comparing a full-time and a part-time position of thirty-five and twenty-four hours respectively, one finds that the educational and experiential requirements are identical and that the only difference between the duties is that the full-time position may train a part-time employee. This is said to be a reflection of the quantity of tasks which is directly related to the quantity of hours worked. However, the jobs bear the same labour grade because the tasks are at the same level of complexity; they all relate to processing, linking and distributing resource materials.

10. Case study no. 5: this was a comparison of three public services clerks' descriptions, one



permanent part-time for twenty hours, one full-time and one permanent part-time at twenty-four hours. All three jobs are at labour grade two and report to the branch head of different branches. The differences in job tasks reflect the needs of the branches but they are of the same level of responsibility. The duties relate to circulation of library materials and providing information to patrons.

11. Case study no. 6: a comparison of two cataloguing and record management technicians, one permanent part-time at twenty-four hours per week and one full time at thirty-five hours a week. They have the same job titles, work at the same branch and the only differences in their jobs are the number of hours that they work; the full-time person may have more tasks. The tasks generally relate to cataloguing and data entry.

12. Job descriptions for the casual positions of Public Service Page and Public Service Assistant show that their duties are at the most routine end of the spectrum of the job descriptions in evidence, but demonstrate a substantial amount of overlap. They are required for example, to sort and shelve materials, maintain tidiness and to assist with many of the duties at the public service desk which are listed in the permanent clerks' job descriptions.

### Argument

13. The employer asked us to make a finding that the permanent part-time employees at the Vaughan Public Libraries share a community of interest with each other and with the permanent full-time people and should be in the same bargaining unit. Accordingly, it was argued that the appropriate bargaining unit would define full-time as twenty hours and above. Counsel argues that to do otherwise would disenfranchise employees who work between twenty and twenty-four hours per week where the only difference between them and those who work more than twenty-four hours is the number of hours of work. We are asked to find that when the number of scheduled hours a week is simply a matter of the needs of the branch, it does not bear on the community of interest question. It is submitted that the twenty-four hour practice comes from the post World War II era when the normal hours of work for a full-time employee were forty-eight hours per week. References were made to the *Snyder's* case, 46 CLLC ¶16,457 and the *Davis Leather* case 47 CLLC ¶16,491. Counsel acknowledges the previous unsuccessful forays into erosion of the twenty-four hour rule, for instance the *Borough of Scarborough* case, [1980] OLRB Rep. Dec. 1713, but urges us to depart from the practice at this point in time. Reference was made to a decision of the Quebec Labour Relations Board, *Dominion Stores*, September 4, 1962, where the Quebec Board moved from a standard practice of twenty-four hours a week to a standard practice of twenty hours a week to determine what employees are regularly employed, on the basis that the twenty-four hour rule had outlived its usefulness. That Board did not feel it necessary to go outside the particular case to make a change in the practice.

14. Reference was also made to *Paris Poultry* [1978] OLRB Rep. May 453 for the proposition that all employees could be put into the same unit because there was no distinction in their work. By analogy here, it is submitted, there would be only one bargaining unit if there were no casuals. Counsel argues that there is complete community of interest between the full-time and the part-time on the permanent staff because they are treated identically except that the part-time people are pro-rated for vacation and benefits.

15. Counsel relies on *Usarco*, [1967] OLRB Rep. Sept. 526 for the criteria that the Board should follow. Reference was also made to various studies including the 1983 report of the Federal Commission of Inquiry into Part-time Work, *Part-time Work in Canada*, John Wallace, Commissioner, in which it is suggested that the twenty-four hour definition of part-time work has outlived its usefulness.

16. Counsel further suggests that the Board would be fettering its discretion under section 6(1) to determine an appropriate bargaining unit if we merely apply the twenty-four hour rule. Besides disenfranchising those who fall between the twenty and twenty-four hour mark, the employer argues it would be left with a bargaining unit which would have a “full pie of full-time employees and half a pie of part-time employees.” Counsel argued that the Board and the union have to take the respondent as they find it. All the evidence, in his view, points to treating the permanent part-time employees as a group, with the exception of the number of hours, a function of the Branch and the level of activity, not of the bargaining needs of the employees. The *Usarco* community of interest guidelines show that the community of interest lies between the permanent part-time and permanent full-time staff and that bargaining cannot intelligently take place otherwise, he submits. Consequently, the twenty-four hour division creates a line that does not apply to this workforce whereas a twenty-hour line would be appropriate because only casuals are below that line and above that line “a clerk is a clerk”. Counsel argues that these facts amount to exceptional circumstances as in the *Paris Poultry* case, *supra*.

17. The union argues that the line drawn at twenty-four hours was done with wisdom. Although a practice may not necessarily be the answer in each and every case, it addresses varying situations well. Nonetheless, the union thought it advisable that the Board review the rule but argued that this should be done in a way that all participants know the case that they must meet; in other words, the union argues that it should not be done in this case or in any particular case, as expressed in the *Borough of Scarborough* case, *supra*. Mr. Lebel says that in conducting the organizing drive the union took into account satisfying the requirements of the Board and that that was why they sought only full-time employees, defining that as those who regularly work more than twenty-four hours. The union believes that there is not a similar community of interest between part-time and full-time in general. The union argues that even if it was correct to accept the employer’s idea of the appropriate bargaining unit the Board would be subjecting the applicant to a rule it did not govern itself by and therefore would not have given it due notice. Therefore the union seeks the normal full-time bargaining unit with an exclusion of those who are regularly working not more than twenty-four hours per week.

### Decision

18. The Board has occasionally departed from the twenty-four hour dividing line in particular cases in which it said it simply did not apply to the facts, see *Chateau Laurier*, [1988] OLRB Rep. Feb. 119 and *Paris Poultry*, *supra*, and has commented on the nature of the practice in other cases. See *Metro Separate School Board*, [1986] OLRB Rep. Sept. 1259 at page 1274. In that case the Board said at paragraphs 28 and 29:

28. Turning to the union’s request for exclusion from the bargaining unit of part-time employees in accordance with Board practice, we think it important to distinguish between the 24 hour “rule” and the principles and educated expectations on which it depends for its origin and continued justification. The principles are simply the community of interest principles described in the cases to which we have referred. The educated expectation is that “employees who work substantially fewer hours than the full-time employees do not generally share a community of interest with the latter group”: *The Board of Education for the City of Toronto*, [1983] OLRB Rep. Mar. 466 at paragraph 20; *Elizabeth Fry Society of Ottawa*, [1985] OLRB Rep. July 1026 at paragraph 23. Separating the two groups requires line drawing. As the Board noted in *Board of Education for the Borough of Scarborough*, *supra*, at paragraphs 12 and 14, the qualitative “substantially fewer” test translated into a quantitative “one-half” one which, forty years ago, came to 24 hours per week. The 24 hour line survived gradual reduction of the standard industrial work week to 40 hours, since it was still possible to say, in the cases in which the Board was called upon to re-examine the concept, that the difference between 24 hours per week and full-time employment was still suffi-

ciently substantial that the important interest of the Board and the parties who appear before it in maintaining certainty and predictability outweighed any interest which might have been served by tinkering with the number, whether out of mathematical faithfulness to the original ratio or for any other reason.

29. On the facts before us, we see no reason to abandon the Board's educated expectation that employees who work substantially fewer hours per week than full-time employees are unlikely to share a community of interest with the latter group. Even in this new field of organizing, the important interest of the Board and the parties who appear before it in maintaining certainty and predictability requires at least that the onus of justifying abandonment of that educated expectation be on the party proposing it. The respondent has not discharged that onus. We have no difficulty imagining that the bargaining aspirations and interest in collective bargaining of someone employed to teach one 2-1/2 hour class per week will be different from those of someone employed to teach 30 hours per week. We do, however, have difficulty saying that someone working 24 hours per week is working "substantially fewer" hours than the 30 hour per week employee. This is not just because of the semantic incongruity of a statement that 80% is substantially less than 100% but, more importantly, because we find it terribly difficult to see why, on the facts before us, the 80% contract extended day Heritage Language instructor should be said to share a greater community of interest with the 2-1/2 hour per week Saturday instructor than with the full-time extended day Heritage Language instructor. Because this is a new area of organizing in an industry in which it might reasonably be expected that the applicability of customary Board practices would be freshly examined, it does not seem to us inappropriate to determine a dividing line which seems to us appropriate on the facts of the case before us, without feeling shackled to the 24 hour line. In doing so, we make no suggestion that the 24 hour per week line should be reconsidered on a case by case basis in industries in which there is already an established history of its application. Equally, we do not suggest or expect that our first look at this question in this new context will immediately and irrevocably set the pattern for bargaining unit determinations in the organizing of instructors employed by school boards.

In that case the Board derived a formula for the instructors with which it was concerned based on the clustering of hours into two groups which the evidence demonstrated.

19. The Library industry is not a new area of organizing. A cursory review of the bargaining unit descriptions going back to 1975 collected in the Board's library reveals dozens of library bargaining units. In that selection, in bargaining units from which part-time employees were excluded, the norm is the normal Board practice of excluding those employed for not more than twenty-four hours per week. The three bargaining units in which the line is drawn at another number of hours, being 17-1/2 hours at the London Public Library Board, 21 hours at the Corporation of Hamilton Public Library Board and 20 hours per week at the Peterborough Public Library Board, are all said to be "having regard to the agreement of the parties".

20. The Board must determine what the appropriate bargaining unit is under section 6(1). The consideration of the practice of the Board as a weighty factor in this determination is not a matter of fettering its discretion. It is a matter of taking into account the "system" interest of the labour relations community in this province, in order to promote consistency, predictability, and the related savings in time and expense for all the parties in the province who are subject to the regulation of the *Labour Relations Act*. This is why the onus of departing from established Board practices has been said to be a substantial one (*Elizabeth Fry Society of Canada*, [1985] OLRB Rep. July 1026. As indicated in the *Board of Education for the City of Scarborough*, [1987] OLRB Rep. Jan. 119, the rules are not artificial, since they come out of the Board's experience, with the aim of producing certainty.

21. In the cases in which the Board has departed from the application of the 24 hour line,



there were truly unique circumstances. *Paris Poultry*, *supra*, cited by the respondent, was a case in which, due to the very variable amount of business and fluctuating need for employees experienced by the employer, no one could really be said to have been a permanent employee and therefore the Board felt that the community of interest lay in an all-employee unit. This is significantly different from the facts before us. The library is an institution with a relatively stable existence. Although the evidence indicated that the population in the geographic area which the employer serves is growing very rapidly, this does not detract at all from the permanency of the employees' work. Indeed, it augurs well for the continued existence of these and other jobs in the respondent's employ. Similarly, in the *Chateau Laurier*, case, *supra*, where the evidence established that all of the employees were on call, in a situation in which a city-wide practice of a fluid work force existed among all the hotel banquet employees, and it was clear that the applicant had not relied on the exclusion of part-time employees in its organizing, the Board said that the rule of division between part-time and full-time was inapplicable to the facts.

22. The respondent's proposal is not an all-employee bargaining unit which was the alternative to the normal practice in the above cases. The respondent asked us to draw a line between those part-time employees who worked twenty hours and above and those who do not. This would exclude casual workers, including pages, from the bargaining unit proposed. It is not a request that the Board use the employer's own "bright line" between full-time and part-time; that would result in the line's being drawn at thirty hours, not twenty hours. The Board has often commented on the interest of reducing fragmentation as one of the factors that it considers in deciding what is the appropriate bargaining unit. Accordingly, in cases where the remaining unit would not be viable in itself, the Board has drawn the boundaries of the bargaining unit in a broader fashion. See for example, *Mississauga Public Library Board*, [1987] OLRB Rep. April 554 at paragraph 14. In that case it was decided that pages should not be excluded from the part-time unit. We refer to this case to demonstrate that it is not only the structure of the permanent staff that is of interest to the Board; the structure of the rest of the workplace also bears on the Board's consideration as to whether the facts of this case cry out for a departure from the Board's practice.

23. Although the nearly identical conditions of work among the permanent staff members indicate a community of interest among them, as pointed out in *Board of Education for the Borough of Scarborough*, *supra*, identical conditions of work do not speak to what has been referred to as the differing appetite for bargaining exhibited by part-time and full-time employees. It must be remembered that that is the consideration that the division between part-time and full-time addresses. The overall Board practice of separation between part-time and full-time employees was not put in question by either party in this case. The distinction between full-time and part-time in the Board's practice has traditionally been supported by arguments of inherent divergence in community of interest related to the differing attachments to the workplace of people who work more or fewer hours for an employer. Whatever the merits of these arguments are, it is clear that they are of less force as one approaches the numerical line between the two groups, whatever it might be. Thus, a marked community of interest difference may indeed be demonstrable between a worker of two hours a week and one of forty but we doubt that it is as strong between one of nineteen and twenty-five (which would still be divided in the employer's proposal). In reflecting on a similar line drawing exercise, the Board in *The Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266 concluded that many different bargaining structures can be viable. After considering the diverse groups and their various positions in that case, the Board said at paragraph 29:

... on the frontiers in the "grey area" one can plausibly argue not only that a disputed classification should fit into one generic unit or the other, but also that for collective bargaining purposes it could comfortably and suitably fit into either unit without jeopardizing its overall viability or appropriateness.

24. The respondent argues that the lines drawn already in the workplace by the employer should be determinative. As pointed out in *Metro Separate School Board, supra*, at page 1269, the terms and conditions of employment are often a product of unilateral employer action and therefore are not necessarily reliable indicators of employee interest and do not in and of themselves define community of interest. The line proposed by the employer in this case is, firstly, not the line it has drawn between part-time and full-time but, rather, the line it has drawn between permanent and casual part-time employees. No suggestion was made that the Board should commence a regular practice of separating casual and permanent part-time employees. Secondly, based as it is on the employer's benefits structure and the requirements of its carrier, it is not fixed in stone. In recent years it has been fixed elsewhere, i.e. at seventeen hours per week. The respondent's 1980 personnel policy indicated that the average number of hours of a part-time employee would be deemed to be twenty-four hours a week for administration of premium payments. What would be the result if a new carrier wanted to cover only employees working that number of hours and above?

25. The respondent submitted material indicating how other labour boards deal with part-time bargaining unit issues, including an excerpt from *Determination of the Appropriate Bargaining Unit by Labour Relations Boards in Canada* by Edward E. Herman, 1966, Queen's Printer, Canada Department of Labour, Economics and Research Branch, xiii., occasional Paper no. 5. The survey of the various Boards at that point in time serves to illustrate the diversity of practice under the statutory provisions giving discretion to the various Boards to determine the appropriate bargaining unit. It appears that some jurisdictions place considerable emphasis on the distinction between casual and regular employees, which the Ontario Board does not. See, among others, *Board of Governors of Ryerson Polytechnical Institute*, [1984] OLRB Rep. Feb. 371. The author of the above work favours a clear enunciation of principles by Labour Relations Boards with respect to certification of seasonal and part-time employees similar to the outline of policies published by the United States National Labour Relations Board. The Board has reviewed the comparative material carefully. We have concluded that, read as a whole, it does not support any particular dividing line between full and part-time bargaining units. It argues, in our view, for well established practice, that is known to the parties affected and which can be departed from in exceptional circumstances. To that extent, it supports the current situation in Ontario.

26. One of the main reasons commentators, parties and others emphasize the publication of principles of practice is the concept of the reliance interest which has been recognized by the Board as an important one in various cases. A relatively recent example is the *Elizabeth Fry Society of Ottawa* case, *supra*. As noted at paragraph 22, the process of developing general approaches is indeed not contrary to section 6(1) but consistent with it. At paragraph 22 the Board said as follows:

22. Over the years, the Board has developed a number of general approaches to bargaining unit definitions, which, in turn, have become incorporated into the structure of collective bargaining in this province. That, after all, is one of the purposes of section 6(1): to inject a public policy element into the process of bargaining unit determination so as to establish a degree of uniformity and viability consistent with the needs of an employer in a particular case and the desires of his employees for self-organization and self-determination. These guidelines cannot, of course, be applied in an arbitrary way without regard to the case before the Board, but with certification applications now numbering over a thousand each year, there is an obvious need for procedural certainty and predictability to serve the expectations of the labour relations community and the parties who appear before the Board on particular cases. Moreover, since the Board has been making these bargaining unit determinations for almost four decades, what we might describe as "approaches" or "practices" or "policies" have been translated into collective bargaining practice over the years. Accordingly, there is a substantial onus on any party requesting that the Board depart from procedures that are known, accepted and relied upon by unions and employers alike.



See also *Wicks Corporation*, [1975] OLRB Rep. Aug. 637. This reliance interest is closely intertwined with the right of self organization, enunciated in section 3 of the Act. The inclusion of section 3 considerations in the balance of determining the appropriate bargaining unit has led to the formulation of the question to be asked in determining the appropriate bargaining unit with an emphasis on the applicant's proposed bargaining unit. Thus, in *Ponderosa Steak House*, [1975] OLRB Rep. Jan. 7 the question to be answered was put as whether there is conflict between the right of self organization as reflected in the bargaining unit proposed by the applicant and harmonious collective bargaining. In *The Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266 the question was put at paragraph 23 as follows:

Does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer.

See also *K Mart Canada Limited*, [1981] OLRB Rep. Sept. 1250 and *Alltour Marketing Support Services Limited*, [1982] OLRB Rep. Oct. 1383.

27. In the case before us, the applicant asserts the reliance interest. The weight given to this interest in the past by the Board relates not only to the factors of the right of self-organization and certainty in the administration of the Act. It also relates to its concern for discouraging parties from playing "the numbers game" or "gerrymandering" as it has variously been called. See, for example, *Maple Lynn Foods Limited*, [1984] OLRB Rep. Dec. 1749. Although we have no evidence in this case which would warrant the conclusion that either party was tailoring its submissions to their estimate of the numbers involved (the count not having been disclosed due to the above dispute), the concern is no less applicable.

28. The Board has carefully weighed the competing interests in this case with the criteria in the various cases cited above in mind. It is clear that the non-permanent staff are assigned more routine tasks than the permanent staff; it is also clear that the functions of both permanent and non-permanent staff are functionally coherent and necessarily integrated. The permanent staff also perform many of the same tasks that are performed by the non-permanent staff. See *East York Public Library*, [1971] OLRB Rep. March 120 and *Mississauga Public Library*, [1987] OLRB Rep. Apr. 554 for discussion of similar questions of integration of various levels of work in public libraries. Although there is functional coherence and integration between and among the permanent staff as well, the Board does not see the different level of responsibility of this group as detracting from the existence of a similar coherence and integration with the non-permanent staff. As Ms. Hall's evidence made clear, part-time employees are essential to the functioning of the library, particularly during its evening and weekend hours. The administration and location of the work in question apply no differently to permanent than non-permanent staff, with the exception of the fact that Ms. Hall may not know of every non-permanent hire. The line of authority flows in the same way from her to the various lower levels of management for all the employees. The source of the work for the two categories of worker is the same. All of these factors argue against drawing a line between permanent and non-permanent employees.

29. The factors which favour the line being drawn as the respondent suggests are the division in the employer's personnel policy as to the grouping of non-permanent and permanent employees and the fact that the level of responsibility delegated to the jobs on either side of that watershed is different. However, these factors do not speak to the concept of the differing appetite for collective bargaining between full and part-time employees which is at the basis of the Board's practice (unchallenged in this case) of separating full-time and part-time workers on the request of either party. We fully acknowledge that the drawing of the line between those two groups may be somewhat arbitrary at the frontiers, as discussed above. However, when the reliance interest is put



into the balance with the factors above which argue against separating permanent and non-permanent staff, we do not find this to be sufficient reason to choose the twenty-hour line as the appropriate one instead. Nor are we persuaded that the standard division will cause serious labour relations problems in this workplace.

30. As for the employer's disenfranchisement argument, the employees who work between twenty and twenty-four hours per week are no more disenfranchised than any other group of employees who are not organized under the *Labour Relations Act*, including the non-permanent staff in this workplace. Their rights under the Act are still available to them. The employer also argued it should not have "half a pie" of part-time employees in this bargaining unit. Drawing the line as it suggests would only give it a "whole pie" of part-time employees if casual part-time employees are excluded from its definition of part-time employee, a definition which the Board does not use.

31. In sum, based on all the evidence and considerations set out above, we do not find that this case discloses sufficiently exceptional facts to warrant departure from the normal practice.

32. For all the above reasons, and having regard to the agreement of the parties on all other aspects of the bargaining unit description, the Board finds that:

all employees of the respondent in the Town of Vaughan, save and except branch heads, persons above the rank of branch head and section head, special projects librarian, administrative assistant, head of technical services, secretary to the chief executive officer, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period,

constitute a unit of employees of the respondent appropriate for collective bargaining.

33. The Board is satisfied on the basis of all the evidence before it that more than fifty-five percent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on August 4, 1989, the terminal date fixed for this application and the date which the Board determines, under section 103(2)(j) of the Act, to be the time for the purpose of ascertaining membership under section 7(1) of the Act.

34. A certificate will issue to the applicant.

---

**0861-84-U (Court File No. 112/88) The Cadillac Fairview Corporation Limited and T.E.C. Leasholds Limited, Applicant v. Retail, Wholesale and Department Store Union, AFL-CIO-CLC, T. Eaton Company Limited and Ontario Labour Relations Board, Respondents**

**Judicial Review - Charter of Rights - Interference in Trade Unions - Mall owner appealing Divisional Court decision (reported at (1988), 62 O.R. 2d 337) upholding Board decision (reported as *T. Eaton Company Limited*, [1985] OLRB Rep. June 941) - Board found mall owner to have committed unfair labour practice by acting on behalf of employer to enforce no solicitation policy without reasonable business justification - Mall owner arguing Board exceeded jurisdiction by infringing on property rights and by finding mall owner acted on behalf of employer - Board acting within statutory authority and not exercising powers in patently unreasonable manner - Appeal dismissed**

*Board Decisions found at [1985] OLRB Rep. June 941, and November 1683*

*Divisional Court Decision reported at (1988) 62 O.R. 2d 337.*

*Court of Appeal, Robins, Tarnopolsky JJ.A and Osler J. (Ad Hoc) September 6, 1989.*

*Robins J.A. (Endorsement):* This is an appeal by Cadillac Fairview Corporation Limited ("Cadillac Fairview") and T.E.C. Leasholds Limited ("T.E.C.") from the judgment of the Divisional Court dismissing an application for judicial review of certain decisions and directions of the Ontario Labour Relations Board (the "Board") dated June 12, 1985 and November 13, 1985, wherein the Board found Cadillac Fairview guilty of an unfair labour practice in prohibiting the respondent, Retail, Wholesale and Department Store Union AFL-CIO-CLC ("the union"), from engaging in union organizing activity in a shopping centre owned by T.E.C. and managed by Cadillac Fairview.

The proceedings before the Board arose out of the union's campaign to organize the employees of the T. Eaton Company Limited ("Eaton's") at the company's flagship store in the Eaton Centre in downtown Toronto. During the course of the campaign the union lodged a complaint with the Board alleging primarily that Eaton's, and the appellants acting on behalf of Eaton's, had contravened s.64 of the *Labour Relations Act*, R.S.O. 1980, c.228 ("the Act") so as to infringe upon the freedom accorded employees by s.3 of the Act to join a trade union of their choice and to participate in its lawful activities. Section 64 prohibits an employer or a person "acting on behalf of an employer" from participating in or interfering with the formation, selection or administration of a trade union. The Board, in a detailed and carefully considered decision, unanimously concluded that Eaton's and Cadillac Fairview had acted in violation of s.64, and directed that they permit the union to engage in certain limited organizing activities on their respective premises. The appellants sought judicial review of the Board's order but Eaton's did not. The Divisional Court's reasons for dismissing the application are now reported at (1988), 62 O.R. (2d) 337.

#### THE FACTUAL BACKGROUND

The factual background needed to understand the points in issue in this appeal may be stated shortly. The union began organizing the employees of Eaton's employed at the Eaton Centre in March 1984. At that time Eaton's employed more than 3,000 employees at that location, of whom more than one-half were part-time employees. The Eaton Centre is owned by way of leasehold interest by T.E.C. T.E.C., in turn, is owned, 60% by Cadillac Fairview, 20% by Toronto-Dominion Bank and 20% by Eatons. Eaton's is a tenant of T.E.C. as, of course, are the other merchants in the Centre. The property is managed on behalf of T.E.C. by Cadillac Fairview. The positions of

these two companies on this appeal are identical. As a matter of convenience, I shall treat Cadillac Fairview as though it were also the owner of the shopping centre.

At the beginning of the organizational campaign, both Eaton's employees and non-employee organizers distributed literature to employees on Eaton's premises. Eaton's subsequently took objection to what it characterized as the union's "unauthorized entry" into its store and its "unauthorized solicitation" of employees during working hours. In May 1984, Eaton's expressly denied the union access or entry into its store premises and put the union on notice that any further attendance by its representatives or agents to encourage or solicit union support would be regarded as a violation of the *Trespass to Property Act*, R.S.O. 1980, c.511. In light of the company's threat to press charges, the union suspended further in-store organizing attempts. At the same time, the union requested a list of names and addresses of potential bargaining unit employees pointing out to Eaton's that "it would not be necessary to attend at your business premises for the purpose of communicating with your staff if we had any other means of reaching them". This information was not forthcoming and the union sought alternative means of communicating with Eaton's employees.

A feature of Eaton's store is that none of the employee access points to the store premises abut public property. Instead, all access points are within the private property of the Eaton Centre. There are two main employee entrances, one through the St. James Mews at the northwest corner of the Mall and the other, much more popular one, at the north side of the store off what is referred to as "two-below" in the Mall. The entrance is at one end of the Dundas Mall lobby in a semi-enclosed area leading to the doors of the Eaton's store. At the opposite end of the lobby is the exit from the northbound subway, and half way across is the escalator coming down from "one-below", which contains the exit from the southbound subway. The broad entrance to the store is sealed off by a large sliding glass door which is kept open the width of a normal doorway to permit employees and other persons having passes to enter prior to the store's opening at 10:00 a.m. An Eaton's security officer stands at the door to check passes.

In the summer of 1984, the union began stationing its organizers outside the entrance to Eaton's at the two-below level before the store opened in the morning and after it closed in the evening. The organizers communicated with employees by distributing literature to them and greeting them as they entered and left the store at that level. The two-below level was used at those times almost exclusively by employees of Eaton's and this activity did not interfere with or obstruct public pedestrian traffic.

Cadillac Fairview objected to the presence of union organizers in the mall and, in particular, to the use of the two-below level for organizational purposes. However, for reasons which are not pertinent to this appeal, for some weeks it took no significant steps to exclude the union from the two-below level or to prevent it from distributing literature there. Nor did it prevent members of an anti-union group called "Stop the Union Now" (S.T.U.N.) from being present in the area during this period. By the end of September, 1984, however, Cadillac Fairview decided to reassert complete control over the property. Accordingly, it notified the union that as of September 28, 1984, Cadillac Fairview would not allow union supporters (nor supporters of S.T.U.N.) to congregate or assemble in the Dundas Mall area prior to the opening of the Eaton's store or after it closed. From that point on the union's practice of stationing organizers outside the Eaton's doors was prohibited. Although the union made further efforts to communicate with employees while on the appellant's premises contrary to the prohibition, those efforts, and the events surrounding them, are immaterial to the issues before this court.

It appears that Cadillac Fairview has a general "no solicitation" policy applicable to all of the shop-



ping centres it manages. As a matter of practice, however, Cadillac Fairview does allow charitable, non-profit or public service groups the use of the Eaton Centre at specific times and locations. From time to time it also permits tenants to hold functions directly related to their commercial activities. Its policy does not contemplate or permit the use of the Centre for union organizing activity. The exceptions have been based solely on Cadillac Fairview's decision as to whether they will enhance the commercial purposes of the Eaton Centre or Cadillac Fairview's image as a "good corporate citizen".

### THE DECISION OF THE ONTARIO LABOUR RELATIONS BOARD

Cadillac Fairview's position before the Board was to the effect that the operation of the Eaton Centre rested within its sole judgment and that in excluding union representatives it was not "acting on behalf of" Eaton's. Cadillac Fairview's management of the Centre was governed by its own commercial interests and its no-solicitation policy was consistent with those interests. Eaton's, Cadillac Fairview submitted to the Board, was no more than a minority shareholder in T.E.C. and "just another tenant" in the Centre. As evidence that Cadillac Fairview managed the Centre pursuant to its own independent judgment and not at the direction of Eaton's, Cadillac Fairview pointed to testimony indicating that it did not always take action against union supporters or challenge the union in its activities when summoned by Eaton's. Cadillac Fairview emphasized as basic to its position before the Board that, on the law as established in *R. v. Peters* (1970), 16 D.L.R. (3d) 143 (Ont.C.A.), aff'd (1971), 17 D.L.R. (3d) 128 (S.C.C.) and *Harrison v. Carswell*, [1976] 2 S.C.R. 200, it is entitled to regulate the use of its property as it sees fit and is not required to justify the reasonableness of its conduct.

The Board dealt at length with the arguments presented by the parties. With respect to Cadillac Fairview, the Board found that the company had engaged in an unfair labour practice by prohibiting the union's organizing activities. Cadillac Fairview's no-solicitation policy, in the Board's view interfered with the statutory organizing rights of Eaton's employees and their access to the union. The interference at a time and place where there was no contact with other users of the Eaton Centre had no business justification and, the Board concluded, constituted an act "on behalf of the employer Eaton's and in violation of s.64". By way of remedy, the Board directed that Cadillac Fairview permit employees of Eaton's "to have unrestricted orderly access to the [union's] organizers at times and in areas of the Mall where normal contact with other users of the Mall does not exist".

Before turning to the issues presented in this appeal, it is important to appreciate the basis upon which the Board found Cadillac Fairview to be in breach of s.64 of the *Labour Relations Act*. This section provides that:

64. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence.

In reaching its conclusion, the Board proceeded on the basis that the theory of the Act was such that the effect of certain conduct may be so clearly foreseeable that an employer may be presumed to have intended the consequences of his acts; and once such conduct has been established, the onus is upon the employer to come forward with a credible business purpose to justify the conduct. That approach, in the Board's view, is applicable not only to employers, but as well, in the words of s.64, to anyone acting "on behalf of" an employer. "[A]nyone who", the Board said, "acting on behalf of an employer, seeks to enforce a policy that has the effect of interfering with employees'

access to information of opportunities for organizing, without a valid business justification, is guilty of an unfair labour practice.” Therefore, in the absence of any business justification for Cadillac Fairview’s overall restrictions on the activities of the union, the company was presumed to have intended the consequences of its acts for purposes of establishing a violation of section 64.

The Board then asked itself whether, on the facts of this case, Cadillac Fairview could be said to have been “acting on behalf of” the employer Eaton’s when it prohibited the organizing activities of the union, and whether it had the requisite intent to constitute an unfair labour practice when it did so. The Board answered these questions in the affirmative, reasoning that:

The two respondents [i.e. Eaton’s and Cadillac Fairview] are, to begin with, obviously no “strangers” to one another with respect to the shopping-centre here in question. Quite apart from Eaton’s 20 per cent holding in the head-leasing company, and its seats on the Board of Directors, Cadillac Fairview and Eaton’s operate in the shopping centre in the daily commercial relationship of landlord and tenant. Clearly this relationship alone is insufficient to establish that any act of Cadillac Fairview which has the effect of benefitting Eaton’s is an act done “on behalf of” Eaton’s, and the approach of the majority of the Court in *Harrison v. Carswell* would seem to underscore this. The Board takes it as established in *Harrison* that the owner/landlord of a shopping mall has an identifiable commercial interest of his own in ensuring generally that traffic in the mall is not disrupted nor customers distracted, even by peaceful and orderly forms of activity, and where activity occurs which poses a tangible threat to such interest, the landlord may well be viewed as acting on his own in taking steps to stop it. Where, however, neither interference, nor, indeed, contact with the shopping public can be shown to exist at all, it becomes more difficult for the landlord to argue that it is acting pursuant to any interest other than that of satisfying the wishes of its tenant (and in this case, its prime tenant in the shopping-centre which bears the tenant’s name) in restricting, to the extent that it has, the efforts of those seeking to organize the employees of that tenant.

The Board next referred to a Canada Labour Relations Board decision which distinguished a bank’s right to prohibit solicitation by charitable and social organizations from its right to prohibit solicitation by a trade union and which held that while the former type of prohibition was completely within the purview of the bank, the latter was not. The Board then went on to say:

It seems to us that Cadillac Fairview is in the same position. If it is found to be a person acting “on behalf of” the employer Eaton’s, neither a record of non-discrimination nor a “floodgates” kind of argument is available to it as a justification for conduct which patently interferes with the statutory organizing rights of Eaton’s employees. Cadillac Fairview’s “defence” in this case, therefore, must rest on the risk of *actual* interference to its commercial interest in the Mall. But what is its commercial interest affected when organizers of the complainant seek to carry on their statutorily-endorsed activities by attending in the area of the Mall at “2 below” immediately outside Eaton’s doors, at a time well before store opening when, to all intents and purposes, the only persons traversing that Mall area are employees of Eaton’s, or to a much lesser extent suppliers, and the only persons raising any detectable complaint about the activity are the management personnel of Eaton’s, or other employees of Eaton’s equally unenthusiastic about the prospect of Union organization? Such persons in either of those categories are, of course, wholly entitled to hold the views they do. But neither of them in the circumstances under consideration can show any interference with their own legitimate activities, such as would offset the importance of access to that Mall area at that hour of the day to the exercise to statutory organizing rights.

The Board found as a fact that Cadillac Fairview, in its broad no-solicitation policy, pursued an overall policy of control which was clearly in line with the desires of Eaton’s and that the policy lacked a sustainable business justification. More specifically the Board found that:

... no sustainable business justification has been made out for Cadillac Fairview having sought to prohibit organizers for the complainant from standing as they did outside the Eaton’s doors at 2 below in an area of the Mall *otherwise open to the public*, at a time when no other members of the public at large were in any way interfered with, for the purpose of handing out literature to

employees entering the Eaton's store, without obstructing that entry, or of being available to engage in conversation with any employees who so chose. In the absence of such business justification, we find the action of Cadillac Fairview to have been simply an unfair labour practice, in violation of section 64 of the *Labour Relations Act*.

As noted, Cadillac Fairview unsuccessfully sought judicial review of the Board's decision in the Divisional Court. It now appeals, with leave, the judgment of the Divisional Court.

### THE SCOPE OF JUDICIAL REVIEW

Before turning to the grounds upon which the appellant seeks to impugn the decision of the Board, it is important to make brief reference to the scope of the court's supervisory authority in an application of this nature. On the basis of a long line of decisions of the Supreme Court of Canada, including the pivotal case of *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227 and the Court's most recent pronouncement on the subject in *Paccar of Canada Ltd. v. Canadian Association of Industrial, Mechanical and Allied Workers, Local 14*, released October 26, 1989, it can be taken for the purposes of this appeal that a decision of this Board, protected as it is by the strong privative provisions of the Act, is unreviewable unless the Board can be found to have erred in interpreting the provisions conferring jurisdiction on it. The Board, in s.106(1), has been given "exclusive jurisdiction" to exercise the powers conferred on it by or under the Act and "to determine all questions of fact or law" that arise in any matter before it. The decisions of the Board are to be "final and conclusive" for all purposes and (s.108) are not to be subject to review in any court.

As a matter of legislative policy, the Board, acting within its jurisdiction, has been made a tribunal of final resort and all questions of law and fact that fall to be investigated and determined by it within that jurisdiction are beyond judicial review. The Board has the right to make errors - the right to be wrong - so as long as it has not so misconstrued the provisions of the Act as to embark on an inquiry not remitted to it or, put another way, so long as it does not act in a manner "so patently unreasonable that its construction cannot be supported by the relevant legislation and demands intervention by the court upon review": *New Brunswick Liquor Corp.*, *supra*, at p.237. If the Board has acted within the area of jurisdiction confided to it by the Act, the preclusive effect of the privative clause renders its decisions unreviewable even though it may have done something wrong within that area. On the other hand, if the Board has made an error which goes to its jurisdiction or has interpreted its powers in a patently unreasonable manner, the privative clause does not operate to oust the court's supervisory authority or to preclude judicial intervention. The same standards of review are applicable to remedial orders made by the Board.

The court's function in proceedings of this nature, in sum, is not an appellate function; the court is not to review the correctness of Board decisions and directions; the court's task is to determine whether the Board has kept within its proper province and acted within the ambit of its statutory jurisdiction. This approach mandates judicial deference and calls for judicial restraint in branding as "patently unreasonable", and hence "jurisdictional", decisions of this specialized Board on which opinions may reasonably differ.

### THE ATTACK ON THE BOARD'S DECISION

The Board's decision is attacked on a number of grounds. These resolve themselves essentially into two lines of argument. The first involves the Board's infringement of Cadillac Fairview's property rights; the second, its finding that Cadillac Fairview had "acted on behalf of" Eaton's.

#### *1. The property rights argument*



Cadillac Fairview's main challenge to both the decision made and the remedy ordered by the Board is based on the contention that the Board had no jurisdiction to abrogate or interfere with its private property rights. Those rights, it is argued, are absolute and cannot be impaired by the Board. In Cadillac Fairview's submission, it is entitled (apart from leasehold arrangements with tenants) to exclude anyone it wishes from the shopping centre for any reason it deems appropriate. Cadillac Fairview invokes the traditional common law principle predicated on absolute notions of private property that every unauthorized entry upon land in the occupation or possession of another constitutes a trespass: *Entick v. Carrington* (1765), 19 How.St.Tr. 1029. Being in lawful possession of the premises, Cadillac Fairview was free to deny entry to persons engaged in union organizing activity. Any subsequent intrusion on the premises for this purpose would be an act of trespass in violation of the owner and occupant's private property rights. The reasons motivating the prohibition of this activity are irrelevant to the issue. The Board, the argument goes, was simply not empowered to override or diminish Cadillac Fairview's common law rights to property. Cadillac Fairview argues that the Board did so by, in effect, granting the union a licence to use the shopping mall for the purposes of an organizing campaign.

Cadillac Fairview contends that it is also entitled to statutory protection against the unpermitted use of its property. Section 2(1) of the *Trespass to Property Act*, *supra*, provides that:

- 2(1) Every person who is not acting under a right or authority conferred by law and who,
- (a) without the express permission of the occupier, the proof of which rests on the defendant,
    - (i) enters on premises when entry is prohibited under this Act, or
    - (ii) engages in an activity on premises when the activity is prohibited under this Act; or
  - (b) does not leave the premises immediately after he is directed to do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.00.

This argument is predicated on the decisions in *R. v. Peters*, *supra*, and *Harrison v. Carswell*, *supra*, in which similar trespass to property legislation was considered by the Supreme Court of Canada. The question in each of those cases was whether persons picketing a tenant of a shopping centre were guilty of trespass under the relevant legislation once the owner of the shopping centre had withdrawn any invitation they might otherwise have had to be present on the shopping centre property. In *Peters*, the picketing was in furtherance of a boycott against the sale of California grapes; in *Harrison*, it was a furtherance of an existing labour dispute. In each case the trespass conviction was upheld. Cadillac Fairview argues that these decisions establish its right to exclude those engaged in the union organizational activity without any need to justify its action in doing so. More specifically, it argues that on the law as articulated by the majority in *Harrison v. Carswell*, it has, vis-a-vis the union, an absolute right to control the use of the Eaton Centre, and persons using the Centre without permission are guilty of trespass and liable both at common law and under the *Trespass to Property Act*. Cadillac Fairview submits that the Board's decision, being contrary to the law, was patently unreasonable, and the Divisional Court should therefore have found jurisdictional error and granted judicial review.

Cadillac Fairview takes the further position that the Board would, in any event, have jurisdiction to abrogate property rights only if it were given express statutory authority to do so. In support of this argument it points to s.11 of the Act, which specifically authorizes union access to an employer's property where employees reside on the property and the employer has the right to controls

access. In the absence of any similar provision authorizing union access to the property of a person “acting on behalf of” an employer, the Board, it is contended, is not empowered to interfere with such property rights.

*2. The argument with respect to the finding that Cadillac Fairview had acted on behalf of Eaton’s*

The basic submission on this branch of the appeal is that there was no evidence before the Board reasonably capable of supporting the finding that Cadillac Fairview had “acted on behalf of” Eaton’s within the meaning of s.64 and, hence, the Board fell into jurisdictional error. Further, it is submitted, there was no jurisdictional foundation for imposing a burden of proof on Cadillac Fairview, as the Board allegedly did, to establish either that it was not “acting on behalf of” Eaton’s or that it had a valid business justification for its solicitation policy. The argument is that the Act does not authorize the Board to shift the burden of proof on an inquiry into an unfair labour practice against a person alleged to be “acting on behalf of” an employer as it does as on an inquiry involving an employer or employer’s organization. In the latter case, s.89(5) expressly imposes the burden of proof that it did not act contrary to the Act on the employer or the employers’ organization. In the absence of any such statutory authorization with respect to persons acting on behalf of an employer, the Board, Cadillac Fairview states, had no power to create a presumption or adopt a procedure adverse to Cadillac Fairview’s interests.

### THE PROPERTY RIGHTS ISSUE

A proper resolution of the property rights issue depends on an analysis of the statutory provisions applicable to the unfair labour practices complaint to be determined by the Board. The union’s complaint was brought under s.64 of the Act. This section, like similar provisions in other labour relations statutes in Canada and elsewhere, uses broad language in prohibiting employers, employers’ organizations and persons acting on behalf of an employer or employers’ organization from participating in or interfering with the formation, selection or administration of a trade union. The conduct that may be violative of s.64 and thus constitute an unfair labour practice is not specifically proscribed in the Act. The prohibition is cast in general terms so as to provide employees with wide protection from interferences with the rights and freedoms granted them under the Act.

It is fundamental to the policy underlying the *Labour Relations Act* that employees have a right of self-organization and participation in lawful union activity. Section 3 guarantees that “Every person is free to join a trade union of his own choice and participate in its lawful activities”. For those rights to be meaningful, it is manifest that employees must have access to union communications and opportunities for organizational activity. Having given employees the right to decide for themselves whether or not to join a union, the legislature can be assumed to have intended that they be permitted to make a free and reasoned choice. Such a choice necessarily implies that employees have access to union information free from restrictions that unduly interfere with the flow of information or their freedom of choice. The legislature can also be assumed to have recognized that the organizational rights guaranteed by s.3 may come into conflict with traditional property and commercial rights in a variety of situations.

While the applicable principles may not differ, it is to be noted that the property rights in issue in this appeal are not those of an employer. Eaton’s has not challenged either the Board’s decision holding it guilty of an unfair labour practice for applying a blanket no-distribution rule against all union literature or the Board’s direction requiring it to permit occasional and very restricted distribution of union literature in the store premises. The property rights being asserted here are those of a third party to the employment relationship - a party who, on the Board’s finding, acted on behalf of the employer and in violation of s.64 in enforcing a no-solicitation policy that interfered



with the statutory organizing rights of employees and their access to the union at times and in areas of the Eaton Centre where normal contact with other users of the Centre did not exist.

Cadillac Fairview's connection with the labour relations of Eaton's and its employees arises, of course, out of its ownership and management of the shopping centre in which Eaton's is located and in which the potential bargaining unit employees work. In that sense, it is not a stranger to the employment relationship of Eaton's and its employees or their labour relations. If the employees are to exercise the rights contemplated by s.3 it follows, as I said earlier, that they must have reasonable access to the union and opportunities for organizational activity. The obvious forum for such activity is the workplace. It is there, after all, where employees share common interests and discuss matters of concern to their employment status; and it is there, and frequently only there, where employees whose support is sought by a union are reasonably accessible. Whether other means of effective communication or solicitation may be reasonably available to a union is a matter for the Board that will depend on a number of readily imaginable factors.

In the case of Eaton's, its large work force of full and part-time employees is employed in a store wholly located within the Eaton Centre. None of the employee entrances to the store premises abut public property; they are all within private property under the control of Cadillac Fairview. If employees entered from the public streets, those streets obviously could be used by the union and its supporters to distribute literature and solicit employees. As it is, organizing activity on the public streets is impracticable. Employees using the subway need not use the public streets and those using the public streets are indistinguishable from others entering the Eaton Centre. If private property rights are indeed absolute, the result is that, while the areas of the shopping centre necessarily used by employees to gain entrance to their work place are functionally equivalent to the public streets, the shopping centre itself creates a buffer of private property between employees and the union which precludes the exercise of s.3 organizational rights at the entrance to the work place where the activity can most effectively be conducted.

In this case, the Board was faced with a clear conflict of rights - the private property rights of Cadillac Fairview on the one hand, and the statutory organizing rights of the employees on the other. In weighing those conflicting rights to determine whether s.64 had been contravened, the Board, in my opinion, was not obliged as a matter of law to treat Cadillac Fairview property rights as absolute. Its responsibility was to apply the general prohibitory language of s.64 to the circumstances which formed the basis of the complaint. In other words, the Board was to decide whether Cadillac Fairview's conduct in prohibiting all organizing activity on its property in the circumstances of this case interfered with the employees' s.3 rights in such a manner as to constitute an unfair labour practice. Section 64, as I noted earlier, is cast in broad terms and the conduct that might constitute an interference with the formation, selection or administration of a trade union is unspecified. Whether a particular form of conduct violates the section has been left to the judgment, discretion and expertise of the Board.

The relationship between the conduct proscribed by s.64 and the rights protected by s.3 mandates that the Board, in the exercise of its jurisdiction, resolve conflicts between property rights and organizational rights. The resolution of the conflict will turn upon a balancing of those rights with a view to arriving at a fair accommodation between the interests sought to be vindicated by the assertion of the rights. The enforcement of s.64 must contemplate incursions into the domain of private property rights and, as the complaint against Eaton's illustrates, into the domain of commercial and business rights as well. In my opinion, notions of absolutism have no place in the determination of issues arising under a statute designed to further harmonious labour relations and to foster the freedom of employees to join a trade union of their choice. In this area of the law, as in so many others, a balance must be struck between competing interests which endeavours to rec-



ognize the purposes underlying the interests and seeks to reconcile them in a manner consistent with the aims of the legislation.

In proceeding as it did, the Board acted within the ambit of its jurisdiction. It sought to accommodate the right of access to union communication with the right to exclusive control and possession of private property. It examined Cadillac Fairview's commercial interest in its no-solicitation policy in light of the lack of means of communication with employees available to the union off the shopping centre premises. To the extent that there was no commercial interest that required protection, the Board found a violation of the Act and abrogated the no-solicitation rule. Once Cadillac Fairview was found to have no valid business purpose that would justify its interference with the protected union activity, its property rights were required to yield, at least to the limited extent ordered by the Board, to the employees' s.3 organizational rights. At the same time, the Board recognized that employee rights under s.3, although protected by s.64, are necessarily qualified and must be weighed in each case against the rights of an employer or a party acting on his behalf to manage and control their property in accordance with their own commercial interests.

I move now to *R. v. Peters, supra*, and *Harrison v. Carswell, supra*. These decisions of the Supreme Court of Canada, in Cadillac Fairview's submission, establish that an owner of a shopping centre may, for whatever reason he deems good and sufficient, prohibit union activity on his private property. The Board, it is argued, therefore acted contrary to the law in holding Cadillac Fairview guilty of an unfair labour practice for exercising well-recognized property rights.

In my respectful opinion, those precedents cannot be read so as to give shopping centre owners the unfettered right to control the use of their premises without regard to the provisions of the *Labour Relations Act*. I made brief reference earlier to the factual circumstance out of which the trespass prosecutions in *Peters* and *Harrison* arose. Clearly, neither of those cases involved a ruling by a labour relations board determining whether particular conduct contravened the provisions of the labour relations statute which the board was duty-bound to administer and enforce. The issues there did not arise within the context of a labour relations statute and were not judged in that framework. The Court accordingly was not called upon to resolve, by way of judicial review or otherwise, as the Board was in this case, a conflict between private property rights and statutorily-protected organizational rights. Moreover, the conduct of the persons found to be trespassers in those cases was sought to be justified on common law grounds and was not, as in this case, conduct sanctioned by statute. In short, I share the view expressed by Gray J. in his judgment on behalf of the Divisional Court that those decisions do not have the effect of "immunizing a mall owner from the reach of decisions issued pursuant to the terms of the *Labour Relations Act*".

The American decisions on the subject are instructive, and particularly so since they arise out of the same economic and social setting as that in which the issue is presented here. These decisions were discussed in some detail by the Board and were obviously helpful to it in formulating the approach that it adopted in this and other cases. It is unnecessary to discuss those decisions further here. I would only point out that, on an analysis of provisions of the *National Labour Relations Act* (ss.7 and 8(a)(i)) comparable to ss.3 and 64 of our Act, traditional private property rights were similarly required to yield to organizational rights. The most frequently cited criterion for balancing organizational rights against property rights is that set forth by the Supreme Court of the United States in *N.L.R.B. v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956) at p.112 in these terms:

... Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. *Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other.* The employer may not affirmatively interfere with organization; the union may not always insist that the employer aid organization. *But when the inaccessibility of employees makes ineffective the reasonable attempts*

*by nonemployees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize.* [Emphasis added.]

See also *Hudgens v. N.L.R.B.*, 424 U.S. 507 (1976); *Central Hardware Co. v. N.L.R.B.*, 407 U.S. 539 (1972).

It is apparent from what I have said that I find no merit in the appellant's s.11 argument to which I made reference above. That section does not limit the Board's jurisdiction with respect to non-employees or employees who do not reside on an employer's property. I agree with the Divisional Court's reasons for rejecting the argument.

In sum, it is my opinion that the Board made no jurisdictional error in rendering the decision and granting the remedy it did, notwithstanding that in the result Cadillac Fairview's property rights were infringed. The Board acted throughout within the scope of its statutory authority and cannot be said to have exercised its powers in a patently unreasonable manner. There is no basis upon which judicial intervention is warranted on this ground and the Divisional Court was correct in so holding.

#### THE "ACTING ON BEHALF OF" THE EMPLOYER ISSUE

This brings me to Cadillac Fairview's secondary line of attack which, as I indicated earlier, centres on the application of s.64 to a person allegedly acting "on behalf of" an employer. The submission basically is that there was no evidence before the Board reasonably capable of supporting the Board's finding that Cadillac Fairview had "acted on behalf of" Eaton's within the meaning of s.64; and that the Board was not empowered, in particular by s.89(5), to create a presumption or shift the burden of proof so as to require Cadillac Fairview to establish that it was not "acting on behalf of" Eaton's or that it did not have the requisite intent for the commission of the unfair labour practice.

In my opinion, the Board did not improperly shift the burden of proof, by means of s.89(5) or otherwise, nor did it adopt any procedures that were unfair to Cadillac Fairview. I agree with the reasons of the Divisional Court in this regard. In cases of alleged unfair labour practice where direct evidence of motivation is not likely available, the Board is entitled to draw inferences of an underlying improper motive from the conduct itself. The cogency of the inference will depend on the totality of the circumstances surrounding the impugned conduct, including the nature of the conduct itself and the explanation for it, if one is forthcoming. In some cases, the harmful effect of the conduct, in terms of the rights the Act is designed to protect, may be so clearly foreseeable that a party may be presumed to have intended those consequences. As a practical matter, it may then be called upon to justify or explain away what may otherwise be presumed to be an improper motive by showing that its conduct was in pursuance of a credible business purpose. In any event, these are evidentiary or fact-finding matters necessary to the discharge of the Board's adjudicative function and within the area of its expertise. The approach adopted by the Board in the present case is, as Gray J. noted, "both a necessary and pragmatic response to the requirements of the Act".

Contrary to the appellant's submission, there was evidence to support the Board's conclusion that Cadillac Fairview had "acted on behalf of" Eaton's within the meaning of s.64. I would adopt the reasons of the Divisional Court in this regard at p.348:

[T]he Board reached this conclusion after due consideration of the six factors referred to earlier, including the evidence of the independent no-solicitation policy. Although this evidence is largely circumstantial and inferential, I would add that it is unlikely to be otherwise. Here again,

I find that the Board has weighed the evidence and reached a result which cannot be said to be patently unreasonable.

The applicants also argue that the Board based its conclusion on “no evidence” and thereby committed a jurisdictional error. However, in light of the requirement that there be a complete absence of evidence before the courts will intervene: *Re Keeprite Workers Independent Union et al. and Keeprite Products Ltd.* (1980), 29 O.R. (2d), 513 (C.A.); this ground of challenge must also fail.

In sum, the Board had jurisdiction to inquire into the unfair labour practice complaint before it and to determine whether Cadillac Fairview was a “person acting on behalf of the employer” in contravention of s.64 of the Act. The issues addressed by the Board in reaching its decision and in fashioning its remedy were integral to the matters assigned to the Board by its enabling statute. Whether this court agrees with the Board’s conclusions or not, the Board did not step outside the ambit of its specialized jurisdiction in deciding that Cadillac Fairview had acted on behalf of Eaton’s in contravention of s.64, nor did it exercise its powers in so patently unreasonable a manner as to be incapable of being rationally supported by the Act. Accordingly, there is no basis for judicial intervention in this case.

#### DISPOSITION

For these reasons, I am of the opinion that the Divisional Court correctly dismissed the appellant’s application for judicial review. I would therefore dismiss the appeal with costs to the respondent union. I would make no order as to costs with respect to the Board.

---













## APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING NOVEMBER 1989

### APPLICATIONS FOR CERTIFICATION

#### Bargaining Agents Certified Without Vote

**3021-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Pearl Homes (Respondent)

Unit: "all construction labourers in the employ of the respondent in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**0254-89-R:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (Applicant) v. Flexitallic Services Canada Inc., and Flexitallic (Canada) Inc. (Respondents)

Unit: "all employees of the respondent working in and out of the County of Lambton, save and except manager and those above the rank of manager, office, clerical and sales staff" (4 employees in unit) (*Having regard to the agreement of the parties*)

**1289-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 1988 (Applicant) v. Wood Systems (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all other sectors in the County of Lanark, the geographic Townships of South Crosby, Bastard, Kitley, WOLFORD, Oxford (on Rideau) and South Gower and all lands north thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

**1345-89-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Leo Alarie & Sons Ltd. (Respondent)

Unit: "all employees of the respondent engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, employees engaged as surveyors and construction labourers within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building but excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

**1346-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Vince Ryan General Contracting (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of the respondent in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial,

commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**1413-89-R:** Canadian Union of Public Employees (Applicant) v. Extendicare Health Services Inc. (Respondent)

Unit #1: “all employees of the respondent at the George St. L. McCall Chronic Care Wing of the Queensway General Hospital in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, paramedical personnel, office and clerical employees, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, and persons for whom any trade union held bargaining rights as of October 6, 1989” (53 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Unit #2: “all employees of the respondent at the George St. L. McCall Chronic Care Wing of the Queensway General Hospital in the Municipality of Metropolitan Toronto regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, paramedical personnel, office and clerical employees and persons for whom any trade union hold bargaining rights as of October 6, 1989” (31 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**1420-89-R:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Edscha of Canada (Respondent) v. Group of Employees (Objectors)

Unit: “all employees of the respondent in Niagara Falls, save and except foremen, persons above the rank of foreman, office, sales and technical staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week” (234 employees in unit) (*Having regard to the agreement of the parties*)

**1498-89-R:** Canadian Union of Public Employees (Applicant) v. The Bruce County Board of Education (Respondent)

Unit: “all employees of the respondent in the County of Bruce, save and except supervisors, persons above the rank of supervisor and persons for whom any trade union held bargaining rights as of September 13, 1989” (4 employees in unit) (*Having regard to the agreement of the parties*)

**1499-89-U:** Canadian Union of Public Employees (Applicant) v. St. Vincent de Paul Hospital (Respondent)

Unit: “all lay employees of the respondent in Brockville, save and except supervisors, persons above the rank of supervisor, graduate pharmacists, undergraduate pharmacists, graduate dieticians, undergraduate dieticians, students employed during the school vacation period and employees in bargaining units for which any trade union held bargaining rights as of September 13, 1989” (63 employees in unit) (*Having regard to the agreement of the parties*)

**1543-89-R:** International Brotherhood of Painters & Allied Trades, Local 1795 Glaziers (Applicant) v. A N H Glass Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: “all glaziers and glaziers’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all glaziers and glaziers’ apprentices in the employ of the respondent in all other sectors in the the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman” (6 employees in unit)

**1551-89-R:** Labourers’ International Union of North America, Local 183 (Applicant) v. York Condominium Corporation No. 456 (Respondent)

Unit: “all employees of the respondent engaged in cleaning and maintenance at 3380 Eglinton Avenue East, Scarborough, Ontario, including resident superintendents, assistant resident superintendents, save and except



property manager, persons above the rank of property manager, office and clerical staff” (2 employees in unit) (*Having regard to the agreement of the parties*)

**1586-89-R:** Service Employees’ International Union, Local 210, Affiliated with Service Employees’ International Union, AFL:CIO:CLC: (Applicant) v. Saugeen Memorial Hospital (Respondent)

Unit: “all office and clerical employees of the respondent in Southampton, Ontario, save and except supervisors, persons above the rank of supervisor, Secretary to the Administrator, and the Secretary to the Director of Nursing” (11 employees in unit) (*Having regard to the agreement of the parties*)

**1622-89-R:** Canadian Union of Public Employees (Applicant) v. The Hearst District Roman Catholic Separate School Board (Respondent)

Unit: “all employees of the respondent in the District of Hearst, save and except Plant and Maintenance Manager and persons above the rank of Plant and Maintenance manager and office” (10 employees in unit) (*Having regard to the agreement of the parties*)

**1625-89-R:** Teamsters Local Union No. 419 (Applicant) v. Arrow Games Inc. (Respondent)

Unit: “all employees of the respondent in Mississauga, save and except supervisors, persons above the rank of supervisor and office and sales staff” (19 employees in unit) (*Having regard to the agreement of the parties*)

**1627-89-R:** The Workers Union of Queen Elizabeth Hospital (Applicant) v. Marriott Corporation of Canada Ltd. (Respondent)

Unit: “all employees of the respondent in Metropolitan Toronto in its Food and Service Management Division at Hugh MacMillan Medical Centre, save and except supervisors, persons above the rank of supervisor, dietitians and student dietitians, office and clerical staff, and employees in bargaining units for which any trade union held bargaining rights as of October 2, 1989” (19 employees in unit) (*Having regard to the agreement of the parties*)

**1652-89-R:** Labourers’ International Union of North America, Local 1059 (Applicant) v. Ably Concrete Floor Ltd. (Respondent)

Unit: “all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all construction labourers in the employ of the respondent in all other sectors in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman” (6 employees in unit)

**1668-89-R:** Carpenters & Allied Workers, Local 27 United Brotherhood of Carpenters & Joiners of America (Applicant) v. 744735 Ontario Ltd. New-Tech Building Erectors (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (5 employees in unit)

**1673-89-R:** Teamsters Local Union 938 (Applicant) v. Quality Releasing Services Ltd. (Respondent)

Unit: “all office and clerical employees of the respondent at Fort Erie and at Brampton, save and except foremen and supervisors, those above the rank of foreman and supervisor, persons regularly employed for not more than 24 hours per week and persons in bargaining units for which any trade union held bargaining rights as of October 10, 1989” (4 employees in unit) (*Having regard to the agreement of the parties*)

**1678-89-R:** Labourers' International Union of North America, Local 527 (Applicant) v. Centre de Céramique et de Marbre Italbec Inc. (Respondent)

Unit: "all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of the respondent in all sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1689-89-R:** Association of Toronto Secondary School Secretaries (Applicant) v. The Board of Education for the City of Toronto (Respondent)

Unit: "all office and clerical employees regularly employed by the respondent in its secondary schools for less than 17½ hours per week, save and except supervisors, persons above the rank of supervisor and persons covered by other Board collective agreements or exclusions thereto" (2 employees in unit) (*Having regard to the agreement of the parties*)

**1699-89-R:** Ontario Public Service Employees Union (Applicant) v. Halton Adolescent Support Services (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent in the Region of Halton, save and except supervisors, persons above the rank of supervisor, office and clerical staff, special project contract workers, and students employed during the school vacation period" (33 employees in unit) (*Having regard to the agreement of the parties*)

**1701-89-R:** International Union of Bricklayers & Allied Craftsmen (Applicant) v. Centre de Céramique et de Marbre Italbec Inc. (Respondent)

Unit: "all marble, tile and terrazzo mechanics, cement masons, resilient floor layers and their helpers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all marble, tile and terrazzo mechanics, cement masons, resilient floor layers and their helpers in the employ of the respondent in all other sectors in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

**1714-89-R:** Teamsters Local Union No. 879 (Applicant) v. 728400 Ontario Ltd. (Respondent)

Unit: "all employees of the respondent working at the Lester B. Pearson International Airport in Mississauga, save and except foremen, those above the rank of foreman, office and sales staff, employees regularly employed for not more than 24 hours per week and students employed during the school vacation period" (2 employees in unit) (*Having regard to the agreement of the parties*)

**1734-89-R** Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Etobicoke (Health Unit), (Respondent)

Unit: "all employees of the respondent at its health department in the City of Etobicoke, save and except public health inspector supervisors, nursing supervisors, mental health coordinator, dental coordinator, aids health planner; persons above the rank of public health inspector supervisor, nursing supervisor, mental health coordinator, dental coordinator and aids health planner; secretary to the medical officer of health; secretary to the associate medical officer of health; secretary to the director of nursing; secretary to the director of inspection; secretary to the dental director; secretary to the business administrator; secretary to the Board of Health; administrative assistant [administration services]; senior clerk [administration services]; students employed through a cooperative training program with a Community College, University or Ryerson Polytechnical Institute; persons regularly employed for not more than 24 hours per week and students employed during the school vacation period; and persons for whom any trade union held bargaining rights as of October 10th, 1989" (45 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**1758-89-R:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 (Applicant) v. Sandeli Group Inc. (Respondent)

Unit: “all plumbers, plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (10 employees in unit)

**1771-89-R:** Ontario Public Service Employees Union (Applicant) v. The Corporation of the Town of Wasaga Beach (Respondent)

Unit #1: “all employees of the respondent in its Wasaga Beach Ambulance Unit, in the Town of Wasaga Beach, save and except supervisors, persons above the rank of supervisor, office and clerical staff, employees regularly employed for not more than 24 hours per week, and students employed during the school vacation period” (6 employees in unit) (*Having regard to the agreement of the parties*)

Unit #2: “all employees of the respondent in its Wasaga Beach Ambulance Unit, in the Town of Wasaga Beach, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, office and clerical staff” (7 employees in unit) (*Having regard to the agreement of the parties*)

**1772-89-R:** Ontario Public Service Employees Union (Applicant) v. Strathroy & Area Association for Community Living (Respondent)

Unit #1: “all employees of the respondent in the Town of Strathroy, save and except forepersons, persons above the rank of foreperson, office and clerical staff, support employees, monitors, live in personnel, vocational instructors and maintenance workers” (15 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Unit #2: “all employees of the respondent in the Town of Strathroy, save and except supervisors, persons above the rank of supervisor, office and clerical staff, monitors, live in personnel, mill workers, labourers, assemblers and operators” (47 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

**1788-89-R:** Service Employees’ Union, Local 210 affiliated with Service Employees’ International Union, AFL:CIO:CLC: (Applicant) v. La Petite Ecole Daycare Centre (Respondent)

Unit: “all employees of the respondent in the City of Windsor, save and except supervisors and persons above the rank of supervisor” (4 employees in unit) (*Having regard to the agreement of the parties*)

**1804-89-R:** United Steelworkers of America (Applicant) v. Dionne Textiles Inc. (Respondent)

Unit: “all employees of the respondent in the Municipality of Metropolitan Toronto, save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff” (23 employees in unit) (*Having regard to the agreement of the parties*)

**1808-89-R:** United Food & Commercial Workers International Union, AFL:CIO:CLC: (Applicant) v. Boshnick Investments Ltd. c.o.b. as Ridley Square I.G.A. (Respondent)

Unit #1: “all employees of the respondent at its Ridley Square I.G.A. store in the City of St. Catharines, save and except deli hostess, department managers, head cashier, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period” (10 employees in unit) (*Having regard to the agreement of the parties*)

Unit #2: “all employees of the respondent at its Ridley Square I.G.A. store in the City of St. Catharines regularly employed for not more than 24 hours per week and students employed during the school vacation



period, save and except deli hostess, department managers, head cashier, office and clerical staff” (52 employees in unit) (*Having regard to the agreement of the parties*)

**1809-89-R:** Niagara Health Care & Service Workers Union, Local 302 Affiliated with the Christian Labour Association of Canada (Applicant) v. Lester Shoalts (Respondent)

Unit #1: “all employees of the respondent at its retirement home(s) in the City of Port Colborne, save and except supervisors, persons above the rank of supervisor, office and clerical staff, registered and graduate nurses, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period” (12 employees in unit) (*Having regard to the agreement of the parties*)

Unit #2: “all employees of the respondent at its retirement home(s) in the City of Port Colborne regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, office and clerical staff, registered and graduate nurses” (22 employees in unit) (*Having regard to the agreement of the parties*)

**1820-89-R:** National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) (Applicant) v. Lamson & Session of Canada Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: “all employees of the respondent in the City of Mississauga, save and except forepersons, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period” (43 employees in unit) (*Having regard to the agreement of the parties*)

**1833-89-R:** International Ladies Garment Workers’ Union (Applicant) v. Liz Claiborne Canada Ltd. (Respondent)

Unit: “all employees of the respondent in Mississauga, Ontario, save and except supervisors, persons above the rank of supervisor, office and sales staff, designers, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week” (27 employees in unit) (*Having regard to the agreement of the parties*)

**1841-89-R:** Labourers’ International Union of North America, Ontario Provincial District Council (Applicant) v. Bristol Enterprises Ltd. (Respondent)

Unit: “all construction labourers in the employ of the respondent in the County of Grey, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**1843-89-R:** International Brotherhood of Painters & Allied Trades, Local 1891 (Applicant) v. Viter Drywall Inc. (Respondent)

Unit: “all painters and painters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction in the Province of Ontario and all painters and painters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit) (*Clarity Note*)

**1937-89-R:** Carpenters & Allied Workers, Local 27 United Brotherhood of Carpenters & Joiners of America (Applicant) v. Ta-Mari Construction Ltd. (Respondent)

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters’ apprentices in the employ of the respondent in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (2 employees in unit)

**1943-89-R:** Labourers' International Union of North America, Local 527 (Applicant) v. Boless Inc. (Respondent)

Unit: "all construction labourers in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of the respondent in all sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

**1949-89-R:** International Brotherhood of Electrical Workers, Local 115 (Applicant) v. 520245 Ontario Ltd. c.o.b. as McLaren Electric (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians' apprentices in the employ of the respondent in all other sectors in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

### **Bargaining Agents Certified Subsequent to a Pre-Hearing Vote**

**1165-89-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Woodstock (Respondent)

Unit: "all employees of the respondent in the City of Woodstock regularly employed for not more than 24 hours per week and students employed during the school vacation period save and except the chief administrative officer, city clerk, assistant clerk, personnel officer, city treasurer, deputy city treasurer, manager of accounting, city engineer, deputy city engineer, development commissioner, parking meter supervisor, mechanic foreperson, works superintendent, assistant works superintendent, works foreperson, pollution control plant superintendent, chief building official, director of community services, development officer, museum curator, superintendent of parks and arenas, superintendent of recreation and transit services, aquatic supervisor, Perry Street arena supervisor, civic centre supervisor, crossing guard supervisor, transit supervisor, fire chief, deputy fire chief, personnel clerk typist, confidential secretaries to the Mayor, the chief administrative officer, city engineer, development commissioner and personnel officer and persons for whom any trade union held bargaining rights as of July 4, 1989" (115 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	81
Number of persons who cast ballots	35
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	10

**1465-89-R:** London & District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The Sisters of St. Joseph of the Diocese of London in Ontario as owner and operator of St. Joseph's Hospital, Sarnia, Ontario (Respondent)

Unit #1: "all lay employees of the respondent in the City of Sarnia, save and except supervisors, foremen, persons above the rank of supervisor, foreman, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, social worker, social work assistants, paramedical personnel, chief engineer, security guards, persons engaged in research work, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period and employees in bargaining units for which any trade union held bargaining rights as of Sept. 14, 1989" (140 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	154
Number of persons who cast ballots	121

Number of ballots marked in favour of applicant	80
Number of ballots marked against applicant	41

Unit #2: "all lay employees of the respondent in the City of Sarnia regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, foremen, persons above the rank of supervisor, foreman, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, social worker, social work assistants, paramedical personnel, chief engineer, security guards, persons engaged in research work, office and clerical staff, and employees in bargaining units for which any trade union held bargaining rights as of Sept. 14, 1989" (124 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	126
Number of persons who cast ballots	83
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	68
Number of ballots marked against applicant	14

**1489-89-R:** Canadian Union of Public Employees (Applicant) v. Laidlaw Transit Ltd. (Respondent)

Unit: "all employees of the respondent at its Paris Division in Brant County, save and except supervisors, persons above the rank of supervisor, maintenance and garage staff, office, clerical and sales staff" (97 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on list as originally prepared by employer	97
Number of persons who cast ballots	84
Number of ballots marked in favour of applicant	45
Number of ballots marked against applicant	39

**Bargaining Agents Certified Subsequent to a Post-Hearing Vote**

**0919-89-R:** Oxford County Board of Education Office Employees Association (Applicant) v. The Oxford County Board of Education (Respondent) v. Ontario Public Service Employees Union (Intervener)

Unit: "all office and clerical employees of the respondent in the County of Oxford, save and except supervisors, persons above the rank of supervisor, secretary to the superintendent of business, secretary to the director of education, affirmative action co-ordinator, persons employed pursuant to a government grant program, students employed during the school vacation period and temporary workers" (56 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	96
Number of persons who cast ballots	89
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	76
Number of ballots marked in favour of intervener	112

**1141-89-R:** Textile Processors, Service Trades, Health Care Professional & Technical Employees International Union, Local 351 (Applicant) v. Alamo Linen Rentals Ltd. (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, sales and accounting staff, drivers, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (34 employees in unit)

Number of names of persons on list as originally prepared by employer	33
Number of persons who cast ballots	28
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	15



**1256-89-R:** Graphic Communications International Union, Local 425-C, Niagara Peninsula (Applicant) v. Greater Canada Colour Printing (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent in the Town of Fort Erie, save and except forepersons, persons above the rank of foreperson, office and sales staff" (271 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	255
Number of persons who cast ballots	237
Number of ballots marked in favour of applicant	133
Number of ballots marked against applicant	104

**1497-89-R:** United Textile Workers of America (Applicant) v. Richelieu Hosiery International Inc. (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent in Cornwall, save and except supervisors, those above the rank of supervisor, mechanics, office and clerical staff" (57 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	49
Number of ballots marked in favour of applicant	32
Number of ballots marked against applicant	17

#### **Applications for Certification Dismissed Without Vote**

**0640-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Lisgar Construction Company, a Division of United Shelters Ltd. (Respondent)

**0811-89-R:** The Ontario Provincial Conference of International Union of Bricklayers & Allied Craftsmen (Applicant) v. 515827 Ontario Ltd. c.o.b. as The Marble Shop (Respondent) v. Group of Employees (Objectors) (10 employees in unit)

#### **Applications for Certification Dismissed Subsequent to a Post-Hearing Vote**

**0322-89-R:** Milk & Bread Drivers, Dairy Employees, Caterers & Allied Employees, Local No. 647 (Applicant) v. Frito-Lay Canada Ltd. Frito-Lay Canada, a Division of Pepsi-Cola Canada Ltd. Hostess Food Products Ltd. The Hostess Frito-lay Company (Respondent) v. Retail, Wholesale & Department Store Union, AFL:CIO:CLC: (Intervener)

Unit: "all employees of the respondent in Metropolitan Toronto and Mississauga, save and except route supervisors (district sales manager), persons above the rank of route supervisor (district sales manager), office staff, working warehouse supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (121 employees in unit)

Number of names of persons on list as originally prepared by employer	121
Number of persons who cast ballots	102
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	88

**1429-89-R:** Textile Processors, Service Trades, Health Care Professional & Technical Employees International Union, Local 351 (Applicant) v. Commonwealth Hospitality Ltd. **Hospitalite Commonwealth Ltee. (Respondent) v. Group of Employees (Objectors)**

Unit: "all employees of the respondent at its hotel located at 970 Dixon Road in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, sales and front desk staff, security staff, persons regularly not employed for more than 24 hours per week and students

employed during the school vacation period” (155 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on list as originally prepared by employer	164
Number of persons who cast ballots	137
Number of segregated ballots cast by persons whose names do not appear on voters’ list	10
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	55
Number of ballots marked against applicant	71
Ballots segregated and not counted	10

### **Applications for Certification Withdrawn**

**3156-88-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. The Board of Governors of Exhibition Place (Respondent)

**1211-89-R:** Association des enseignantes et des enseignants suppléants d’Ottawa-Carleton élémentaire séparé (Applicant) v. Ottawa Roman Catholic Separate School Board (Respondent)

**1216-89-R:** Association des enseignantes et des enseignants suppléants d’Ottawa-Carleton élémentaire séparé 2i (Applicant) v. Carleton Roman Catholic Separate School Board (Respondent)

**1517-89-R:** Canadian Union of Public Employees, Local 1281 (Applicant) v. Carleton University Students’ Association Inc. (Respondent)

**1534-89-R:** Carpenters & Allied Workers, Local 27 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Summerwood Products (Respondent)

**1672-89-R:** United Steelworkers of America (Applicant) v. Simmons Ltd. (Respondent)

**1674-89-R:** Teamsters, Local Union 938 (Applicant) v. Transcocoan Releasing Ltd. (Respondent)

**1715-89-R:** Teamsters, Local Union 419 (Applicant) v. Classic Cargo Systems Canada Inc.; Livingston International Inc. (Respondents)

**1746-89-R:** Labourers’ International Union of North America, Ontario Provincial District Council (Applicant) v. Archie Greco Paving Ltd. (Respondent)

**1777-89-R:** Aluminum, Brick & Glass Workers International Union (Applicant) v. Keenan Industries Ltd. (Respondent)

**1658-89-R:** International Association of Machinists & Aerospace Workers (Applicant) v. Macro Engineering Company Ltd. (Respondent) v. Group of Employees (Objectors)

**1971-89-R; 1972-89-R:** Labourers’ International Union of North America, Ontario Provincial District Council (Applicant) v. Ryder Concrete Forming Specialties Ltd. (Respondent)

### **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**0550-88-R:** Ontario Provincial Conference of the International Union of Bricklayers & Allied Craftsmen (Applicant) v. 394039 Ontario Corporation c.o.b. as Certified Masons and 647530 Ontario Ltd. c.o.b. as Certified Masons (Respondents) (*Granted*)

**2155-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Pino Drywall Construction Ltd. and Skarlan Enterprises Ltd. (Respondents) (*Dismissed*)

**2903-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 38 (Applicant) v. Maple Leaf Vil-

lage Investments Inc. (formerly Foxhead Inn Ltd.) and York-Hannover Hotels Inc. (Respondents) (*Withdrawn*)

**0170-89-R:** Ontario Council of the International Brotherhood of Painters & Allied Trades and International Brotherhood of Painters & Allied Trades, District Council 46 (Applicants) v. W.G. Gallagher Construction Co. and W.G. Gallagher Construction Ltd. (Respondents) (*Dismissed*)

**0997-89-R:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Primus Masonry Ltd. and Muro Construction Inc. (Respondents) (*Granted*)

**1231-89-R:** Niagara Health Care & Service Workers Union, Local 302 affiliated with Christian Labour Association of Canada (Applicant) v. Fourth Tower Assets Inc. c.o.b. as Cavendish Manor Retirement Home, Tor-group Management Inc., and Senior Care Services Inc. (Respondents) (*Granted*)

**1330-89-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Otter Drainage & Excavating Inc.; Otter Equipment & Rentals Ltd. (Respondents) (*Granted*)

**1515-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Jeda Construction Corp. and Kayak Development Ltd. (Respondents) (*Granted*)

**1516-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Kayak Development Ltd. (Respondent) (*Granted*)

**1636-89-R:** Peterborough Typographical Union, Local 248 Printing, Publishing, & Media Workers Sector of the Communications Workers of North America (Applicant) v. Lindsay Post Ltd., and Wilson & Wilson Ltd. (Respondents) (*Granted*)

**1716-89-R:** Teamsters, Local Union 419 (Applicant) v. Classic Cargo Systems Canada Inc.; Livingston International Inc. (Respondents) (*Withdrawn*)

## SALE OF A BUSINESS

**0550-88-R:** Ontario Provincial Conference of the International Union of Bricklayers & Allied Craftsmen (Applicant) v. 394039 Ontario Corporation c.o.b. as Certified Masons and 647530 Ontario Ltd. c.o.b. as Certified Masons (Respondents) (*Granted*)

**2156-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Pino Drywall Construction Ltd. and Skarlan Enterprises Ltd. (Respondents) (*Dismissed*)

**2829-88-R:** United Food & Commercial Workers International Union, Locals 175 & 633 (Applicant) v. Loblaws Supermarkets Ltd. and Kevin No Frills (Respondents) (*Withdrawn*)

**2903-88-R:** United Brotherhood of Carpenters & Joiners of America, Local 38 (Applicant) v. Maple Leaf Village Investments Inc. (formerly Foxhead Inn Ltd.) and York-Hannover Hotels Inc. (Respondents) (*Withdrawn*)

**0170-89-R:** Ontario Council of the International Brotherhood of Painters & Allied Trades and International Brotherhood of Painters & Allied Trades, District Council 46 (Applicants) v. W.G. Gallagher Construction Co. and W.G. Gallagher Construction Ltd. (Respondents) (*Dismissed*)

**1515-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Jeda Construction Corp and Kayak Development Ltd. (Respondents) (*Granted*)

**1516-89-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Kayak Development Ltd. (Respondent) (*Granted*)



**1615-89-R:** A Council of Trade Unions acting and representative & agent of Teamsters Local Union 230, and Labourers’ International Union of North America, Local 183 (Applicant) v. Ferma Concrete & Paving Ltd. and Ferma Concrete & Paving (1988) Ltd. and Malton Paving (Respondents) (*Withdrawn*)

**1636-89-R:** Peterborough Typographical Union, Local 248 Printing, Publishing, & Media Workers Sector of the Communications Workers of North America (Applicant) v. Lindsay Post Ltd., and Wilson & Wilson Ltd. (Respondents) (*Granted*)

**1716-89-R:** Teamsters, Local Union 419 (Applicant) v. Classic Cargo Systems Canada Inc.; Livingston International Inc. (Respondents) (*Withdrawn*)

**APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS**

**1130-89-R:** Barry Taunt (Applicant) v. United Food & Commercial Workers International Union, Local 1000A (Respondent) v. Fisher Scientific Ltd. (Intervener) (22 employees in unit) (*Dismissed*)

**1466-89-R:** Beverley Woods (Applicant) v. Textile Processors, Service Trades, Health Care Professional & Technical Employees International Union, Local 351 (Respondent) v. C-Tech Ltd. (Intervener)

Unit: “all employees in Cornwall, save and except supervisors, persons above the rank of supervisor, engineering, drafting, office, sales and clerical staff” (81 employees in unit) (*Granted*)

Number of names of persons on list as originally prepared by employer	81
Number of persons who cast ballots	76
Number of ballots marked in favour of respondent	11
Number of ballots marked against respondent	65

**1519-89-R:** John T. Larue (Applicant) v. U.S.W.A., Local 8748 (Respondent) v. Royal Tire Service Ltd. (Intervener) (10 employees in unit) (*Granted*)

**1651-89-R:** Barb Tozak (Applicant) v. Ontario Public Service Employees Union and its Local 221 (Respondent) (*Withdrawn*)

**1654-89-R:** Heather Broyd et al (Applicant) v. Service Employees’ International Union, Local 204 (Respondent) v. Lexogest Inc. (Intervener) (*Granted*)

**1664-89-R:** Premier Concrete/Primeau Argo “Employee’s Ashton Plant & Arnprior Plant” David Devlin (Applicant) v. Teamsters, Chauffeurs, Warehousemen & Helpers, Local 91 (Respondent) v. Premier Concrete & Primeau Argo, Division of Lake Ontario Cement Ltd. (Intervener) (*Withdrawn*)

**1742-89-R:** Sandra S. Blois (Applicant) v. United Food & Commercial Workers International Union (Respondent) v. 637532 Ontario Inc. c.o.b. as Plantation Motor Hotel (Intervener) (20 employees in unit) (*Granted*)

**APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE**

**1693-89-U:** Mitsubishi Electronics Industries Canada Inc. (Applicant) v. Communications & Electrical Workers of Canada and its Local 532 et al (Respondents) (*Withdrawn*)

**1727-89-U; 1728-89-U; 1729-89-U:** Mitsubishi Electronics Industries Canada Inc. (Applicant) v. Communications & Electrical Workers of Canada and its Local 532, Jim Counahan, Fred Rutherford, et al (Respondents) (*Withdrawn*)

**1766-89-U:** Caterpillar of Canada Ltd. (Applicant) v. National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 252, Td Murphy and members of the respon-

dent Local Trade Union employed as salaried employees by Caterpillar of Canada Ltd. (Respondents) (*Dismissed*)

**1819-89-U:** The Corporation of the City of Cambridge (Applicant) v. Amalgamated Transit Union, Local 1608, Russell Abernethy, Raymond Blackmore, and Russell Falkiner (Respondents) (*Granted*)

**1889-89-U:** Textron Colonial Tool Operations A Division of Textron Canada Ltd. [Formerly Ex-Cell-O Corporation Ltd. Colonial Tool Operations] (Applicant) v. National Automobile, Aerospace & Agricultural Implement Workers Union of Canada (CAW-Canada) and its Local 195 et al (Respondents) (*Withdrawn*)

## **APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)**

**1764-89-U:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 and D. Clark, Watts & Henderson Ltd., Rexway Sheet Metal Ltd., English & Mould Ltd. (Respondents) (*Granted*)

## **COMPLAINTS OF UNFAIR LABOUR PRACTICE**

**2138-87-U:** Roxanne Proulx (Complainant) v. C.U.P.E., Local 2274 and Gordon O'Byrne (Respondents) (*Withdrawn*)

**1787-88-U:** Canadian Union of Postal Workers (Complainant) v. Elf Von Dehn, Best Cleaners & Contractors, Bob Kingsley, Canada Post Corporation (Respondents) (*Withdrawn*)

**2917-88-U:** Martin Shier (Complainant) v. United Paperworkers International Union, Local 1330 (Respondent) v. Boise Cascade Canada (Intervener) (*Dismissed*)

**0427-89-U:** United Food & Commercial Workers Union, Local 175 (Complainant) v. Hudson Bay Northern Stores (Respondent) (*Withdrawn*)

**0782-89-U:** Ontario Nurses' Association (Complainant) v. The Sisters of St. Joseph of the Diocese of London, in Ontario (Respondent) (*Granted*)

**0824-89-U:** Harvey Reizgys (Complainant) v. Shopmen's Local Union #734 (Respondent) (*Withdrawn*)

**0898-89-U:** Canadian Paperworkers Union (Complainant) v. Hemiwood Ltd. (Respondent) (*Withdrawn*)

**0952-89-U:** Labourers' International Union of North America, Local 607 (Complainant) v. Kraft Construction Company (1978) Ltd. (Respondent) (*Withdrawn*)

**0956-89-U:** United Paperworkers International Union and its Local #92 (Complainant) v. Boise Cascade Canada Ltd. (Respondent) v. Canadian Paperworkers Union and its Local 306 (Intervener) (*Withdrawn*)

**0970-89-U:** United Food & Commercial Workers International Union, Local 175 (Complainant) v. Northern Stores Inc. (Respondent) (*Withdrawn*)

**0998-89-U:** Steinberg Inc. (Complainant) v. United Food & Commercial Workers International Union, Local 175, W. E. Hanley, Barry H. Bailey & Jim Crockett (Respondents) (*Withdrawn*)

**1007-89-U:** The Bricklayers, Masons Independent Union of Canada, Local 1 (Complainant) v. Primus Masonry Ltd. and Muro Construction Inc. (Respondents) (*Granted*)

**1045-89-U:** Marc Dallaire (Complainant) v. IWA Canada and its local I-2995, and Levesque Plywood Ltd. (Respondent) (*Withdrawn*)

**1113-89-U:** Patrick Huddart & Olaf Ercegovic (Complainants) v. C.A.W., Local 1285 and Bernie Woldenga (Respondents) (*Dismissed*)

**1114-89-U:** Shelley Lynn Lusk (Complainant) v. Service Employees International Union, Local 210 (Respondent) (*Dismissed*)

**1192-89-U:** Ralph John Farkas (Complainant) v. United Food & Commercial Workers International Union, Local 175 and Miracle Food Mart, Store #230 (Respondents) (*Dismissed*)

**1349-89-U:** Ontario Public Service Employees Union, Local 664 (Complainant) v. Community Living Timmins Integration Communautaire (Respondent) (*Withdrawn*)

**1389-89-U:** Hotels, Clubs, Restaurants, Tavern Employees Union, Local 261, Ottawa (Complainant) v. York Hannover Hotels Ltd. Skyline Hotel, Ottawa (Respondent) (*Withdrawn*)

**1552-89-U:** Blair Ross (Applicant) v. Tony Spada - Union Representative, Caroline Bloom - Property Manager (Greenwin), Rene Blake - Superintendent (Greenwin) (Respondents) (*Withdrawn*)

**1553-89-U:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Complainant) v. Rocam Store Fixtures (Respondent) (*Withdrawn*)

**1612-89-U:** Gary R. Walsh, President, The United Taxi Alliance of Canada (Complainant) v. Able Atlantic Taxi (Respondent) (*Withdrawn*)

**1621-89-U:** David Andrew Gray (Complainant) v. Dixhill Corporation Swift Sure Courier Service Ltd. (Respondent) (*Dismissed*)

**1658-89-U:** International Association of Machinists & Aerospace Workers (Complainant) v. Macro Engineering Company Ltd. (Respondent) v. Group of Employees (Objectors) (*Withdrawn*)

**1707-89-U:** Margaret MacLean (Complainant) v. Bellwoods Park House, The Adult Cerebral Palsy Foundation (Respondent) (*Dismissed*)

**1717-89-U:** Teamsters Local Union 419 (Complainant) v. Classic Cargo Systems Inc.; Livingston International Inc. (Respondents) (*Withdrawn*)

**1738-89-U:** Ronald Marsh (Complainant) v. Ontario Public Service Employees Union; Loyalist College (Respondents) (*Withdrawn*)

**1811-89-U:** John L. Ray (Complainant) v. Kirk Richardson (Respondent) (*Dismissed*)

**1832-89-U:** Office & Professional Employees International Union, Local 81 (Complainant) v. West Fort William Credit Union Ltd. (Respondent) (*Withdrawn*)

**1864-89-U:** E. S. Fox Ltd. (Complainant) v. Bob Stoppel et al (Respondents) (*Withdrawn*)

**1872-89-U:** Canadian Brotherhood of Railway, Transport & General Workers (Complainant) v. Charterways Transportation Ltd. (Respondent) (*Withdrawn*)

**1921-89-U:** International Ladies Garment Workers Union (Complainant) v. Preston Manufacturing Ltd. (Respondent) (*Withdrawn*)

## APPLICATIONS FOR RELIGIOUS EXEMPTION

**1446-89-M:** Richard Mansel Horricks (Applicant) v. Teamsters, Chauffeurs, Warehousemen & Helpers, Local 91 (Respondent Trade Union) v. Steep Rock Calcite (Respondent Employer) (*Dismissed*)



## APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

**1813-89-M:** Law Crushed Stone, A Division of Hard Rock Paving Co. Ltd. (Employer) v. Canadian Brotherhood of Railway, Transport & General Workers (Trade Union) (*Granted*)

**1814-89-M:** Hard Rock Paving Co. Ltd. (Employer) v. Canadian Brotherhood of Railway, Transport & General Workers (Trade Union) (*Granted*)

## TRUSTEESHIP

**T-150-89:** United Brotherhood of Carpenters & Joiners of America (Applicant) v. United Brotherhood of Carpenters & Joiners of America, Local 93 (Respondent) (*Granted*)

## JURISDICTIONAL DISPUTES

**2115-85-JD:** International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local 128 (Complainant) v. E. S. Fox Ltd. and United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 666 (Respondents) (*Withdrawn*)

**0940-89-JD:** Q-Tech Ltd. (Complainant) v. International Association of Heat & Frost Insulators & Asbestors Workers, Local 95 (Respondent) (*Granted*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**3264-87-M:** Corporation of the City of Thunder Bay (Applicant) v. International Brotherhood of Electrical Workers, Local 339 (Respondent) (*Withdrawn*)

**1993-88-M:** CUPE, Local 1329 (Applicant) v. Town of Oakville (Respondent) (*Granted*)

**0512-89-M:** Ontario Nurses' Association (Applicant) v. Queen Elizabeth Hospital, Toronto (Respondent) (*Withdrawn*)

**0951-89-M:** CUPE and its Local 831 (Applicant) v. The Corporation of the City of Brampton (Respondent) (*Withdrawn*)

**1017-89-M:** Ontario Public Service Employees Union (Applicant) v. Access Community Services Inc. (Respondent) (*Dismissed*)

**1018-89-M:** Sudbury Memorial Hospital (Applicant) v. Ontario Nurses' Association (Respondent) (*Granted*)

**1600-89-M:** Ontario Nurses' Association (Applicant) v. St. Peter's General Hospital (Respondent) (*Granted*)

**1601-89-M:** Niagara Health Care & Service Workers Union, Local 302 affiliated with the Christian Labour Association of Canada (Applicant) v. Fourth Tower Assets Inc. c.o.b. as Cavendish Manor Retirement Home and Torgroup Management Inc. and Senior Care Services Inc. (Respondents) (*Withdrawn*)

**1631-89-M:** London & District Service Workers' Union, Local 220 (Applicant) v. Freeport Hospital (Respondent) (*Withdrawn*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**1538-89-OH:** William A. Shannon (Complainant) v. Keller Pipelines Inc. (Respondent) (*Withdrawn*)

**1546-89-OH:** Garry Wayne Grimoldby (Complainant) v. Belanger Installations Ltd. (Respondent) (*Withdrawn*)

**1556-89-OH:** Scott McNeil (Complainant) v. Benn Iron Foundry (Respondent) (*Withdrawn*)

**1558-89-OH:** Rick Wilson (Complainant) v. Benn Iron Foundry (Respondent) (*Withdrawn*)

## **COLLEGES COLLECTIVE BARGAINING ACT**

**3213-88-M:** Ontario Public Service Employees Union (Applicant) v. Niagara College of Applied Arts & Technology (Respondent) (*Withdrawn*)

## **CONSTRUCTION INDUSTRY GRIEVANCES**

**1568-88-G:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 700 (Applicant) v. Nicholls Radtke Ltd., Union Gas Ltd. (Respondents) (*Withdrawn*)

**2153-88-G:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Pino Drywall Construction Ltd. (Respondent) (*Granted*)

**2154-88-G:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Pino Drywall Construction Ltd. and Skarlan Enterprises Ltd. (Respondents) (*Dismissed*)

**3116-88-G:** International Association of Bridge, Structural & Ornamental Ironworkers, Local 721 (Applicant) v. Cosnaut Steel Inc. (Respondent) (*Granted*)

**0060-89-G:** International Association of Heat & Frost Insulators & Asbestors Workers, Local 95 (Applicant) v. Q-Tech Ltd. (Respondent) (*Granted*)

**0064-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. M.P.S. Carpentry Services (Respondent) (*Dismissed*)

**0539-89-G:** International Brotherhood of Painters & Allied Trades, Local 205 (Applicant) v. Mack Coatings & Sandblasting Ltd. (Respondent) (*Granted*)

**0599-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2222 (Applicant) v. Ariss Construction Inc. (Respondent) (*Withdrawn*)

**0773-89-G:** Labourers' International Union of North America, Local 607 (Applicant) v. Kraft Construction Company (1978) Ltd. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) (*Withdrawn*)

**0889-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Caledon Metal Rolling Ltd. (Respondent) (*Granted*)

**1061-89-G:** Labourers' International Union of North America, Local 607 (Applicant) v. Kraft Construction Company (1978) Ltd. (Respondent) (*Withdrawn*)

**1341-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Otter Drainage & Excavating Inc. (Respondent) (*Granted*)

**1396-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 (Applicant) v. Campbell-Cox Ltd. (Respondent) (*Granted*)

**1491-89-G:** Carpenters & Allied Workers, Local 27 of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. P.C.L. Constructor Eastern Inc. (Respondent) (*Withdrawn*)

**1640-89-G:** Ontario Provincial Conference of the International Union of Bricklayers & Allied Craftsmen (Applicant) v. Brun Tile Ltd. c.o.b. as Royal Tile & Terrazzo (Respondent) (*Granted*)

**1641-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 800 (Applicant) v. An Mar Mechanical & Electrical Contractors Ltd. (Respondent) (*Withdrawn*)

**1676-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 46 (Applicant) v. R. L. Coolsaet of Canada Ltd. (Respondent) (*Granted*)

**1724-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 785 (Applicant) v. Helmut Kruschat (Respondent) (*Dismissed*)

**1776-89-G:** The Ontario Pipe Trades Council of the United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 71 ('Local Union 71') (Applicant) v. Commercial Plumbing & Heating (Ottawa) Ltd. (Respondent) (*Granted*)

**1794-89-G:** Resilient Floor Workers, United Brotherhood of Carpenters & Joiners of America, Local 2965 (Applicant) v. Calibre Enterprises Ltd. (Respondent) (*Granted*)

**1831-89-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Duron Ottawa Ltd. (Respondent) (*Withdrawn*)

**1845-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 508 (Applicant) v. Boyer Mechanical, Plumbing & Heating (Respondent) (*Withdrawn*)

**1846-89-G:** United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, Local 508 (Applicant) v. Canmec Mechanical Contractors Ltd. (Respondent) (*Granted*)

**1859-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Sera Construction Ltd. (Respondent) (*Granted*)

**1895-89-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Lafontaine's Excavating (Respondent) (*Granted*)

**1915-89-G:** United Brotherhood of Carpenters & Joiners of America, Local 2041 (Applicant) v. Bascelli Construction Inc. (Respondent) (*Granted*)

## **APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION**

**0250-87-R:** United Brotherhood of Carpenters & Joiners of America, Local 27 (Applicant) v. Mollenhauer Ltd. (Respondent) v. Labourers' International Union of North America, Local 183 (Intervener #1) v. Metropolitan Toronto Apartment Builders Association (Intervener #2) (*Dismissed*)

**0844-89-R:** Ontario Secondary School Teachers' Federation (Applicant) v. The Hearst Board of Education (Respondent) (*Dismissed*)

**1754-89-U:** The Corporation of the City of Cambridge (Applicant) v. Amalgamated Transit Union, Local 1608, Russell Abernethy, Raymond Blackmore, and Russell Falkiner (Respondents) (*Dismissed*)

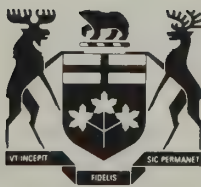




2A20N  
LR  
054

# **ONTARIO LABOUR RELATIONS BOARD REPORTS**

## **Annual Consolidated Index 1989**



Ontario

# ONTARIO LABOUR RELATIONS BOARD

*Chair* M.G. MITCHNICK

*Alternate Chair* R.O. MACDOWELL

*Vice-Chairs* M. BENDEL

L. DAVIE

N.V. DISSANAYAKE

R.A. FURNESS

O.V. GRAY

R.J. HERMAN

B. HERLICH

R.D. HOWE

B. KELLER

P. KNOPF

J. McCORMACK

M. NAIRN

K. O'NEIL

K. PETRYSHEN

N.B. SATTERFIELD

I.C.A. SPRINGATE

I.M. STAMP

G. SURDYKOWSKI

S.A. TACON

## *Members*

J. ANDERSON

B.L. ARMSTRONG

C.A. BALLENTINE

F.C. BURNET

W.A. CORRELL

K.S. DAVIES

M. EAYRS

A.R. FOUCAULT

W.N. FRASER

W. GIBSON

P.V. GRASSO

A. HERSHKOVITZ

M. JONES

F. KELLY

J. KENNEDY

H. KOBRYN

J. KURCHAK

J. LEAR

D.A. MacDONALD

W.J. McCARRON

C. McDONALD

R.D. McMURDO

T. MEAGHER

R.R. MONTAGUE

J.W. MURRAY

W.S. O'NEILL

D.A. PATTERSON

H. PEACOCK

R.W. PIRRIE

J. REDSHAW

K.V. ROGERS

J.A. RONSON

M.A. ROSS

M. ROZENBERG

J.A. RUNDLE

G.O. SHAMANSKI

R.M. SLOAN

E.G. THEOBALD

J. TRIM

S. WESLAK

W.H. WIGHTMAN

N.A. WILSON

D.G. WOZNIAK

## *Registrar*

T.A. INNISS

## *Board Solicitors*

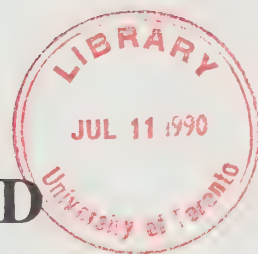
C. EDWARDS

K.A. MacDONALD

P.S. TOOP



ONTARIO  
LABOUR RELATIONS BOARD  
REPORTS



A Monthly Series of Decisions from the  
Ontario Labour Relations Board

Annual  
Consolidated Index 1989

EDITOR: COLLEEN EDWARDS

Selected decisions of particular reference value are  
also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.

Typeset, Printed and Bound by Union Labour in Ontario



## CASES REPORTED 1989

Action Electrical Ltd.; Re I.B.E.W., Local 353; Re Group of Employees..... (Feb.)	79
Admiral Linen Supply Limited; Re Textile Processors, Service Trades, Health Care, Professional and Technical Employees, International Union, Local 351..... (Feb.)	90
Aero Block and Precast Ltd., Kamet Enterprises Ltd. and 541190 Ontario Inc.; Re C.J.A.; Re The Form Work Council of Ontario; Re L.I.U.N.A., Local 493 ..... (Feb.)	93
Airline Limousine Services Limited, McDonnell-Ronald Limousine Service Limited operating as; Re Teamsters Union, Local 938; Re McIntosh Limousine Service Limited; Re Airlift Limousine Services Limited; Re Air Cab Limousine Services (1985) Limited; Re Aaroport Limousine Services Ltd. .... (May)	395
Allied Signal Automotive of Canada Inc.; Re C.A.W.; Re Group of Employees ..... (Sept.)	927
Amarcord Carpenters Ltd.; Re L.I.U.N.A., Local 183; Re C.J.A., Local 27 (Formerly Local 1190) ..... (June)	531
Ameri-Cana Motel Limited and 603185 Ontario Limited; Re C.J.A., Local 38..... (Oct.)	1009
Art Gallery of Ontario, The; Re O.P.S.E.U., O.P.S.E.U., Local 535, Ted Loughead, Ed Gortley, Ruth Jones, Carla Roth, Karen Heffernan, Sharon McGill, Elizabeth Khera, Michael Douglas, Mary Greta, Kerry Kim, Catherine Spence, Jill Cate, Gisela Navia, Bud Johnston, Clairra Hargitay ..... (June)	537
Atway Transport Inc.; Re I.W.A.; Re Taiga Trucking (Ontario) 1980 Inc.; Re Menroy Trucking Inc.; Re Demers & Dargy Transport Inc.; Re Gosselin Trucking; Re Paul Gagnon Trucking; Re J. Bernard Trucking; Re Contractors Cleanup Services Limited; Re L.I.U.N.A., Local 706; Re Kopka Transport Inc.; Re Paramount Transportation Limited..... (Feb.)	101
Atway Transport Inc.; Re I.W.A. .... (June)	540
B. Maskell Limited; Re I.U.O.E., Local 793 ..... (Apr.)	319
Balkos, Paul; Re Lawson Packaging Toronto, A Division of the Lawson Mardon Group Limited and G.C.I.U., Local 500M ..... (Sept.)	932
Beaverbrook Estates Inc.; Re L.I.U.N.A., Local 183; Re Group of Employees ..... (Apr.)	322
Beling Cement Construction Limited; Re L.I.U.N.A., Ontario Provincial District Council; Re Group of Employees ..... (July)	709
Beresford Tavern, 446285 Ontario Limited c.o.b.; Re International Beverage Dispensers' and Bartenders' Union, Local 280 of then H.E.R.E..... (May)	405
Blue Bell Canada Incorporated; Re A.C.T.W.U.; Re Group of Employees ..... (May)	412
Board of Education for the City of Etobicoke; Re C.U.P.E. .... (Dec.)	1203
Boeing Canada/DeHavilland Division; Re Jill Bettles..... (Dec.)	1213
Boise Cascade Canada Ltd., and I.B.E.W., Local 1744; Re I.A.M., Lodge 771 ..... (May)	413
Brian Chevrolet Oldsmobile Ltd.; Re C.A.W.; Re Group of Employees ..... (Apr.)	324
Briecan Const. Limited; RE U.A., Local 800 ..... (May)	417
Butcher Engineering Enterprises Limited, The; Re Teamsters, Local Union No. 880 ..... (Feb.)	109



Butcher Engineering Enterprises Limited, The; Re Teamsters Union, Local 880 .....	(Apr.)	332
Calligaro Tile Company Limited; Re B.A.C. and The Ontario Provincial Conference of B.A.C.....	(Oct.)	1014
Calvano Lumber & Trim Co. Ltd.; Re C.J.A., Local 27.....	(Apr.)	337
Cambridge, Corporation of the City of; Re A.T.U., Local 1608, Russell Abernathy, Raymond Blackmore, and Russell Falkiner.....	(Nov.)	1095
Canadian Pacific Forest Products Limited; Re I.U.O.E., Local 865 .....	(June)	569
Carey's Restaurants (Dundas) Inc.; Re H.E.R.E., Local 75; Re Group of Employees .....	(Mar.)	233
Carter, Mark and Brad Carter; Re S.M.W., Local 539; Re Imperial Insulation & Roofing (1982) Limited .....	(Feb.)	112
Caterpillar of Canada Ltd.; Re C.A.W. and its Local 252, Ted Murphy and members of the respondent Local Trade Union employed as salaried employees by Caterpillar of Canada Ltd. ....	(Nov.)	1099
Chatelaine Villa Nursing Home; Re Tracy Castellan .....	(Aug.)	827
Chinook Chemicals Company, G. Lemaire and; Re E.C.W.U.....	(Oct.)	1021
Chinook Chemicals Company, G. Lemaire and; Re E.C.W.U.....	(Dec.)	1218
Coca-Cola Ltd.; Re U.F.C.W.; Re Group of Employees.....	(Jan.)	1
Coca-Cola Ltd.; Re U.F.C.W.; Re Group of Employees.....	(May)	427
Conrad Heating Co. and Joe Conrad; Re S.M.W., Local 47.....	(May)	437
Conseil Scolaire de Langue Francaise d'Ottawa-Carleton (Section Catholique); Re Association des Enseignantes et des Enseignants Suppléants d'Ottawa-Carleton Éulementaire Seupareu'e .....	(June)	575
Continuous Colour Coat Ltd.; Re Mark Doucette .....	(Jan.)	10
Covello Brothers Limited; Re L.I.U.N.A., Local 837; Re C.J.A., Local 38 .....	(Feb.)	119
Cuddy Food Products Ltd.; Re R.W.D.S.U., AFL:CIO:CLC;; Re U.F.C.W., Local 175 and U.F.C.W., AFL-CIO-CLC; Re John Henson and 25 Others; Re Deb Johnston and Others.....	(Feb.)	126
Cuddy Food Products, Cuddy Food Products Ltd. and Cuddy International Corporation c.o.b. as a Partnership in the Name of; Re R.W.D.S.U., AFL:CIO:CLC;; Re U.F.C.W., Local 175, AFL-CIO-CLC .....	(June)	583
Del Equipment Limited, Del Hydraulics Limited and Edinburgh Electric Limited; Re C.A.W. and its Local 303.....	(Jan.)	19
Dufferin Construction Company; Re C.J.A., Local 27; Re The Foundation Company of Canada Limited; Re L.I.U.N.A., Local 183; Re Dufferin Construction Company, a Division of St. Lawrence Cement Inc. ....	(Jan.)	25
Dunning Paving Limited, The Crown in Right of Ontario as represented by the Ministry of Transportation, and; Re O.P.S.E.U.; Re The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Barry Lightfoot; Re John Knight and Lorraine Norris c.o.b. as Agassiz Forestry/Environmental Services; Re John McCormack; Re Elsie McCormack; Re The Crown in		

right of Ontario as represented by the Ministry of Government Services, and Wayne Forbes c.o.b. as Forbes Janitorial Services..... (July)	714
Dunning Paving Limited, The Crown in Right of Ontario as represented by the Ministry of Transportation, and; Re O.P.S.E.U.; Re The Crown in right of Ontario as represented by the Ministry of Natural Resources, and Barry Lightfoot; Re Smith Forestry Enterprises; Re Hotchkiss Forestry Enterprises; Re John Knight and Lorraine Norris c.o.b. as Agassiz Forestry/Environmental Services; Re Nicol Seguin; Re John McCormack; Re Elsie McCormack; Re The Crown in right of Ontario as represented by the Ministry of Government Services, and Wayne Forbes c.o.b. as Forbes Janitorial Services ..... (Oct.)	1028
E. S. Fox Limited, Pro Insul Limited, S.M.W., Local 562; Re H.F.I.A., Local 95; Re Ontario Sheet Metal Workers' and Roofers' Conference; Re Ontario Sheet Metal and Air Handling Group; Re Master Insulators' Association of Ontario Inc. .... (July)	738
E. S. Fox Limited; Re I.B.E.W., Local 353..... (July)	746
E.M. Carpentry (1982) Limited; Re L.I.U.N.A., Local 183; Re C.J.A., Local 27 (Formerly Local 1190); Re Westroyal Carpentry Ltd.; Re Camo Construction; Re B. Bezeau Framing; Re Pipau Construction; Re Joeb Construction; Re Lopes Carpentry; Re Oliveira Carpentry Contractors; Re Belmonte Carpentry Ltd.; Re Landl Construction; Re Cayouette Framer; Re Zemars Carpenters Ltd.; Re Divo Construction; Re P & F Carpentry; Re M. Lanteigne Construction..... (Aug.)	829
Eastern Construction Company Limited; Re The Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 172 Restoration Steeplejacks ..... (Nov.)	1105
Eddie Bauer, 162706 Canada Inc.; Re C.J.A., Local 27 ..... (Oct.)	1041
Electrical Contractors' Association of Ottawa, The; Re I.B.E.W., Local 586..... (Apr.)	344
Ellis-Don Limited; Re C.J.A., Local 27; RE L.I.U.N.A., Local 183; Re The Form Work Council of Ontario; Re Metropolitan Toronto Apartment Builders Association; Re Milne & Nicholls Ltd.; Re Mollenhauer Limited..... (Mar.)	234
Empress Graphics Inc., Council of Printing Industries of Canada on behalf of; Re G.C.I.U., Local 500M, Lithographers, Mike R. Zajac, Earl McDonnell and Cliff Robinson ..... (June)	587
Estonian Relief Committee in Canada; Re S.E.I.U., Local 204, affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C.; Re Group of Employees..... (May)	440
Etobicoke Public Library Board, The Corporation of the City of, The Corporation of the City of Etobicoke; Re B.A.C., Local 2 ..... (Sept.)	935
F & R Charbonneau Construction Enr.; Re C.J.A., Local 2041 ..... (Apr.)	348
Ferano Construction Limited; L.I.U.N.A., Local 527, and L.I.U.N.A., Ontario Provincial District Council; Re C.J.A., Local 2041 ..... (May)	446
Flo-Con Canada Inc.; Re C.A.W.; Re Group of Employees ..... (July)	752
Flo-Con Canada Inc.; Re C.A.W.; Re Group of Employees ..... (June)	594
Foster Wheeler Limited, L.I.U.N.A., Local 1089 and; Re B.B.F, Local 128 ..... (May)	451
Foster Wheeler Limited, L.I.U.N.A., Local 1089 and; Re B.B.F., Local 128 ..... (Feb.)	128
Four Seasons Drywall Systems and Acoustics Limited; Re L.I.U.N.A., Local 506 and Drywall, Acoustic, Lathing and Insulation, Local 675 of the C.J.A. .... (June)	599

Fram Canada Inc.; Re C.A.W.; Re Group of Employees .....	(Feb.)	133
Gloucester, The Corporation of the City of; Re Teamsters Union, Local 91; Re Association of Municipal Employees; Re C.U.P.E. ....	(Mar.)	241
Gloucester, The Corporation of the City of; Re Teamsters Union, Local 938; Re The Association of Municipal Employees .....	(Apr.)	352
Gloucester, The Corporation of the City of; Re Teamsters Union, Local 938; Re The Association of Municipal Employees .....	(Aug.)	846
Goldcrest Furniture Ltd.; Re U.S.W.A.; Re Laundry and Linen Drivers and Industrial Workers, Local 847 affiliated with the Teamsters Union; Re Group of Employees .....	(Mar.)	245
Goldcrest Furniture Ltd.; Re U.S.W.A.; Re Laundry and Linen Drivers and Industrial Workers, Local 847 affiliated with the Teamsters Union; Re Group of Employees .....	(Apr.)	355
Goldcrest Furniture Ltd.; Re Laundry and Linen Drivers and Industrial Workers, Local 847, Affiliated with the Teamsters Union; Re Gerardo Mercante, Vincenzo Reda, Franco Bini and U.S.W.A. ....	(June)	604
Goldcrest Furniture Ltd.; Re Laundry and Linen Drivers and Industrial Workers, Local 847, Affiliated with the Teamsters Union; Re Gerardo Mercante, Vincenzo Reda, Franco Bini and the U.S.W.A. ....	(Sept.)	967
Gottcon Contractors Limited, Gottardo Properties (Dome) Inc., Gottardo Properties Limited, Gottardo Contracting (1980) Inc., Gottardo Contracting Co. Limited, Gottardo Holdings Company Ltd., Gottardo Management Limited and Gottardo Corporation; Re L.I.U.N.A., Local 506; Re B.M.I.U., Local .....	(July)	757
Grant Construction, Division of Malachy Grant and Associates; Re L.I.U.N.A., Local 506 .....	(July)	766
Gudelj, Mr. Ivan; Re G.M.P.; Re Canon Inc. ....	(Aug.)	850
Guild Electric Limited; Re I.U.O.E., Local 793, John Monti, Joseph Kennedy, Mr. Montagnese, Mr. Ricciuto; Re IBEW Construction Council of Ontario .....	(Sept.)	969
Hamilton Automatic Vending Company Limited; Re Cement, Lime, Gypsum and Allied Workers Division of the B.B.F. and its Local 576 .....	(Mar.)	248
Hamilton Yellow Cab Company Limited, Fleet Taxi, Yellow Taxi, Transportation Unlimited Inc., D. J. Van Boort et al; Re R.W.D.S.U., AFL-CIO-CLC .....	(Feb.)	144
Hillview Farms Limited; Re U.F.C.W., Local 1000A; Re Group of Employees .....	(Mar.)	259
Hotel Dieu of St. Joseph's Hospital of Windsor; Re O.N.A. ....	(Dec.)	1221
Humpty Dumpty Foods Limited; Re Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647; Re The Retail, Wholesale Bakery and Confectionery Workers' Union, Local 461 of the R.W.D.S.U., AFL-CIO-CLC: .....	(Feb.)	147
Innopac Inc. Purity Packaging, Progressive Packaging Limited, Condor Laminations; Re Toronto Typographical Union, Number 91, Printing Publishing and Media Workers Sector of the Communications Workers of North America .....	(June)	608
J.S.H. Mueller Ltd., Electrical Trade Bargaining Agency and Electrical Contractors Association of Ontario; Re I.B.E.W., Local 594; RE I.B.E.W., Local 586 and Ken J. Woods .....	(June)	610
Kalla, Nurdin; Re A.T.U., Local 113; Re Toronto Transit Commission .....	(May)	459



Keith Holdsworth Consulting Ltd.; Re L.I.U.N.A., Local 183 .....	(June)	619
King Glass Limited/King Glass; Re P.A.T., Local 1795 -Glaziers .....	(Dec.)	1223
Knob Hill Farms Limited; Re U.F.C.W., Local 206 .....	(Feb.)	149
Knob Hill Farms Limited; Re U.F.C.W., Local 206 .....	(Aug.)	852
Kraft Construction Company (1978) Ltd.; Re I.U.O.E., Local 793.....	(Feb.)	169
Lever & Associates Contracting Inc.; Re B.B.F .....	(June)	630
Lindsay, Balford; Re C.A.W., Local 1451; Re Budd Canada Inc. ....	(Mar.)	264
Lonco Construction Limited, Caradon Developments Inc.; Re L.I.U.N.A., Local 1059.....	(Mar.)	274
Lopez, Luis; Re C.U.P.E. ....	(May)	464
M. Pickard Construction Co. Ltd.; Re L.I.U.N.A., Ontario Provincial District Council; Re I.U.O.E., Local 793; Re Group of Employees .....	(Oct.)	1046
M.W.M. Construction of Kitchener Limited; Re L.I.U.N.A., Ontario Provincial District Council; Re Group of Employees.....	(June)	635
Macdero Construction Limited; Re L.I.U.N.A., Local 183.....	(Dec.)	1224
McLean Security, 445733 Ontario Ltd. c.o.b. as; Re U.S.W.A. ....	(Oct.)	1048
Melnor Manufacturing Ltd.; Re C.A.W. ....	(Apr.)	360
Metropolitan Life Insurance Company; Re I.U.O.E., Local 796; Re Allen Maintenance Ltd. ....	(Feb.)	175
Metropolitan Toronto Sewer and Watermain Contractors Association; Re I.U.O.E., Local 793; Re Ontario Concrete and Drain Contractors Association; Re L.I.U.N.A., Local 183; Re Team- sters' Union, Local Union 230; Re Metropolitan Toronto Road Builders Association; Re Cana- dian Automatic Sprinkler Association; Re U.A., Local 46; Re Ontario Pipe Trades Council of U.A.; Re U.A., Local 853; Re Metropolitan Toronto Apartment Builders Association; Re Toronto Construction Association, General Contractors Section; Re Sarnia Construction Associ- ation; Re Construction Association of Thunder Bay; Re Sudbury Construction Association; Re Electrical Power Systems Construction Association; Re Ontario Precast Concrete Manufacturers' Association; Re the Residential Low-Rise Forming Contractors Association of Metropolitan Toronto and Vicinity; Re The Heavy Construction Association of Toronto; Re Toronto Housing Labour Bureau .....	(Dec.)	1226
Mlakar, Maria; Re C.U.P.E., Local 79; Re The Municipality of Metropolitan Toronto .....	(Dec.)	1246
Mollenhauer Limited; Re C.J.A., Local 27; Re L.I.U.N.A., Local 183; Re Metropolitan Toronto Apartment Builders Association .....	(Sept.)	972
Mollenhauer Limited; Re C.J.A., Local 27; Re L.I.U.N.A., Local 183; Re Metropolitan Toronto Apartment Builders Association .....	(Nov.)	1112
Mollenhauer Limited; Re C.J.A., Local 27; Re L.I.U.N.A., Local 183; Re Metropolitan Toronto Apartment Builders Association .....	(Oct.)	1050
Montreal House, 408762 Ontario Limited o/a; Re H.E.R.E., Local 604 A.F.L.-C.I.O., O.F.L.-C.L.C. ....	(Jan.)	29
Muskoka Board of Education, The; Re O.P.S.T.F.; Re O.S.S.T.F.; Re The Peel Board of Education .....	(July)	775

National Capital Road Builders Association; Re I.U.O.E., Local 793 and Teamsters, Local 91; Re The Operating Engineers Employer Bargaining Agency; Re The Labourers Employer Bar- gaining Agency .....	(Jan.)	31
National Trust; Re Union of Bank Employees (Ontario), Local 2104, Canadian Labour Con- gress; Re Janeen G. Snare .....	(Apr.)	369
New Dominion Stores, The Great Atlantic & Pacific Company of Canada Limited; Re R.W.D.S.U., Local 414; Re U.F.C.W., Locals 175 and 633 .....	(May)	473
Niagara Bronze Limited; Re G.M.P. and Jack Erskine, et al .....	(Aug.)	857
Nicholls-Radtke Limited; Re U.A., Local 46 and Bill Weatherup .....	(Aug.)	860
Northfield Metal Products Ltd.; Re G.M.P. (A.F.L.-C.I.O., C.L.C.); Re Group of Employees .....	(Jan.)	57
O.J. Pipelines Incorporated; Re U.A., Local 800 .....	(Sept.)	976
Ontario Bus Industries Inc.; Re C.A.W.; Re Group of Employees .....	(Nov.)	1115
Ontario Hydro; Re The Society of Ontario Hydro Professional and Administrative Employees; Re C.U.P.E. - C.L.C. Ontario Hydro Employees Union, Local 1000; Re The Coalition to Stop the Certification of the Society on behalf of Certain Employees, Tom Stevens, C.A. Stevenson, and Michelle Morrissey-O’Ryan and George Orr on behalf of Certain Objecting Employees .....	(Feb.)	185
Ontario Hydro; Re The Society of Ontario Hydro Professional and Administrative Employees; Re C.U.P.E. - C.L.C. Ontario Hydro Employees Union, Local 1000; Re The Coalition to Stop the Certification of the Society on behalf of certain employees, Tom Stevens, C.A. Stevenson, and Michelle Morrissey-O’Ryan and George Orr on behalf of certain objecting employees .....	(Sept.)	983
Ontario Legal Aid Plan, The, under the Administration of the Law Society of Upper Canada & Community Legal Education Ontario; Re O.P.S.E.U.; Re The Ontario Association of Legal Clinics (“OALC”) and York Community; Re Community Legal Education Ontario, The Ontario Legal Aid Plan under the Administration of the Law Society of Upper Canada and Ross Irwin; Re Tenant Hotline Inc.; Re Neighbourhood Legal Services; Re Injured Workers’ Consultants .....	(Aug.)	862
P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited; Re I.B.E.W., Local 353; Re Group of Employees; Re I.B.E.W. Construction Council of Ontario, I.B.E.W., Local 105; Re P & M Electric Limited, Pomico Holdings Inc. ....	(June)	638
P & M Electric Limited, Pomico Holdings Inc., P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited; Re I.B.E.W. Construction Council of Ontario, I.B.E.W., Local 105, I.B.E.W., Local 353; Re Group of Employees .....	(Oct.)	1053
P & M Electric Limited, Pomico Holdings Inc., P & M Electric (1982) Ltd., Northland Electric (Ont.) Limited; Re I.B.E.W. Construction Council of Ontario, I.B.E.W., Local 105, I.B.E.W., Local 353; Re Group of Employees .....	(Oct.)	1064
Philips Air Distribution Ltd., Lau Division -; Re C.A.W. ....	(June)	642
Pinkerton’s of Canada Ltd.; Re C.G.A.; Re Richard Bibeault; Re National Protective Services Company Limited; Re George Faulkenburg; Re Board of Management for the Metropolitan Toronto Zoo; Re International Union United Plant Guards, Local 1962; Re Ron Saxton; Re Burns International Security Services Limited; Re Gordon A. Southorn; Re Wackenhut of Canada Limited; Re Shane Freeman; Re U.S.W.A.; Re Larry Bishop .....	(July)	783

Pioneer Mechanical Limited; Re U.A., Local 46 .....	(Mar.)	277
Plaza Fibreglas Manufacturing Limited and Plaza Electro-Plating Ltd. and Citron Automotive Industries and Sabina Citron; Re U.S.W.A. ....	(May)	479
Quebec and Ontario Paper Company Ltd., C.P.U., Local 84 and; Re I.L.A., Local 1477....	(July)	796
Rainscreen Metal Systems Incorporated; Re S.M.W., Local 30 .....	(May)	482
Real Carpenters; Re C.J.A., Local 27.....	(Dec.)	1250
Rexway Sheet Metal Limited, U.A., Local 46 and D. Clark, Watts & Henderson Limited, English & Mould Limited; Re S.M.W., Local 30 .....	(Nov.)	1154
Rocca, Peter; Re Ontario Catholic Occasional Teachers Association; Re Metropolitan Separate School Board.....	(Apr.)	371
Ronal Canada Inc.; Re C.A.W.....	(Jan.)	60
Royce Dupont Poultry Packers; Re U.F.C.W., Local 175, AFL-CIO-CLC; Re Group of Employees .....	(May)	492
Senstar Corporation; Re Salaried Employees Alliance ComDev .....	(Nov.)	1159
Shearwall Forming (East) Ltd.; Re C.J.A., Local 27; Re the Form Work Council of Ontario; Re Automatic Structures Ltd. ....	(Dec.)	1254
Simpsons Limited; Re R.W.D.S.U., AFL:CIO:CLC: and its Local 1000 .....	(May)	513
Smiths Falls Community Hospital - North Unit, The; Re Independent Canadian Transit Union; Re C.U.P.E. and General Workers; Re The Smiths Falls Community Hospital - South Unit.....	(Jan.)	64
Spruce Falls Power and Paper Company Limited, C.P.U., Local 89, and; Re Lumber and Saw-mill Workers' Union, Local 2995.....	(June)	645
St. Pierre, Jeanne; Re U.A.W., Local 444 and Chrysler Canada Ltd.....	(Dec.)	1251
Stebill Limited, Hemmin Mine Service Limited; Re L.I.U.N.A., Local 607.....	(Apr.)	384
Steen Contractors Limited, L.I.U.N.A., Local 597 and; Re U.A., Local 463; Re Milne and Nicholls/Vanbots Joint Venture; Re L.I.U.N.A., Ontario Provincial District Council; Re Valentine Enterprises Contracting, a Division of Valentine Developments Limited; Re Metropolitan Toronto Sewer and Watermain Contractors Association; Re Ontario General Contractors Association; Re The Ontario Pipe Trades Council of the U.A.; Re Canadian Automatic Sprinkler Association; Re U.A., Local 853; Re International Brotherhood of Electrical Workers Construction Council of Ontario .....	(Nov.)	1173
Steinberg Inc., Miracle Food Mart Division and Oshawa Holdings Limited, c.o.b. as Dutch Boy Foods; Re U.F.C.W., Locals 175 & 633.....	(Oct.)	1066
Stone & Webster Canada Limited; Re B.S.O.I.W., Local 786; Re The Ontario Erectors Association .....	(July)	804
Sudbury Algoma Hospital; Re O.N.A. and O.P.S.E.U.....	(Apr.)	390
Supreme Carpentry Inc.; Re C.J.A., Local 27.....	(Nov.)	1181
Tactix Construction Limited; Re C.J.A., Local 27; Re L.I.U.N.A., Local 183 .....	(Aug.)	903



Thorold I.G.A. Market; Re Sandra Taylor; Re U.F.C.W., Local 175; Re Group of Employees; Re U.F.C.W., Local 633 .....	(Aug.)	907
Toronto, Department of English University of; Re Dana M. Colarusso; Re C.U.E.W., Local 2 .....	(Aug.)	922
Toronto, Governing Council of the University of; Re C.U.P.E.; Re Group of Employees ..	(May)	521
Toronto, The Municipality of Metropolitan; Re I.B.E.W., Local 353; Re The Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario .....	(Mar.)	279
Trans Continental Printing Inc.; Re Teamsters' Union, Local 91; Re Group of Employees ..	(Nov.)	1187
Tridon Limited; Re C.A.W.; Re Tridon Employees' Union .....	(Mar.)	295
U-Need-A Cab Limited; Re R.W.D.S.U., AFL:CIO:CLC: .....	(Mar.)	301
U-Need-A-Cab Limited; Re R.W.D.S.U., AFL:CIO:CLC;; Re 751341 Ontario Ltd. operating as M & M Holdings, and M & M Auto Centre South End Cab Inc. ....	(Dec.)	1275
Vaughan Public Libraries; Re C.U.P.E. ....	(Dec.)	1282
Venture Industries Canada Ltd.; Re C.A.W.; Re Group of Employees .....	(Oct.)	1074
Vibration Assessment Limited; Re L.I.U.N.A., Local 607 .....	(Feb.)	223
Victor Carpentry Limited; RE L.I.U.N.A., Local 183; Re C.J.A., Local 27 .....	(May)	524
Victory Soya Mills; Re Teamsters Union, Local 1247 Chemical, Energy and Allied Workers .....	(June)	653
W.G. Gallagher Construction Limited; Re The Ontario Council of P.A.T.; Re P.A.T., District Council 46; Re W.G. Gallagher Construction Co. and W.G. Gallagher Construction Limited .....	(Nov.)	1191
Wallcraft Painting and Decorating Ltd.; Re P.A.T., Local 557 .....	(Mar.)	306
Warren Steeplejacks Limited, Warren Mechanical Limited, Blastco Corporation; Re S.M.W., Local 537 .....	(Mar.)	309
Westburne Industrial Enterprises Ltd., Nedco, Division of; Re Tish Vassair; Re Teamsters Union, Local 419 .....	(June)	658
Westdale Painting & Decorating Ltd.; Re P.A.T., Local 205 .....	(Sept.)	984
Whitby General Hospital; Re O.N.A. ....	(June)	664
Widcor Limited and Green-King Ltd.; Re C.J.A., Local 27 .....	(Jan.)	66
Woodstock & District Association for the Mentally Retarded; Re London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C.; Re Group of Employees ...	(Feb.)	227
Wraymar Construction and Rental Sales Ltd.; Re I.U.O.E., Local 793; Re Group of Employees .....	(June)	682
Zalev Brothers Limited; Re Robert McIntyre; Re U.S.W.A., Local 14045 .....	(July)	810

## COURT PROCEEDINGS

Bay-Tower Homes Company Ltd., Bay-Tower Management Inc., Ledi Properties Inc., 518270 Ontario Limited, 554614 Ontario Limited; Re L.I.U.N.A., Local 183, and the Ontario Labour Relations Board; Re C.J.A., Local 27 .....	(June)	695
Cadillac Fairview Corporation Limited and T.E.C. Leasholds Limited; Re R.W.D.S.U., AFL-CIO-CLC, T. Eaton Company Limited and Ontario Labour Relations Board .....	(Dec.)	1292
Cuddy Chicks Limited; Re Ontario Labour Relations Board and U.F.C.W., Local 175 ....	(Sept.)	989
Dellbrook Homes, The Toronto Housing Labour Bureau, Philmor Developments Limited, Mor-Alice Construction Limited, Greenpark Homes, Heron Homes, Bramalea Limited, Victoria Wood Development Corporation Inc., Two Star Construction Ltd., Michael Reilly, and the Ontario Labour Relations Board; Re C.J.A., Local 27; Re L.I.U.N.A., Local 183 .....	(Mar.)	315
Dellbrook Homes, L.I.U.N.A., Local 183, The Toronto Housing Labour Bureau, Philmor Developments Limited, Mor-Alice Construction Limited, Greenpark Homes, Heron Homes, Bramalea Limited, Victoria Wood Development Corporation Inc., Michael Reilly, and the Ontario Labour Relations Board; Re C.J.A., Local 27 .....	(July)	823
Double S Construction, Michael Van Landeghem, Tracy Van Landeghem and Terry Van Landeghem and Terry Manzutti, Ontario Labour Relations Board, 657572 Ontario Inc., c.o.b. as; Re L.I.U.N.A., Ontario Provincial District Council, and its affiliated Local Unions L.I.U.N.A., Locals 183 et al .....	(June)	696
G.P. Construction, 556631 Ontario Limited, c.o.b. as; Re I.B.E.W., Local 1687, and the Ontario Labour Relations Board .....	(June)	696
G.P. Construction, 556631 Ontario Limited c.o.b. as; Re I.B.E.W., Local 1687, and the Ontario Labour Relations Board .....	(Oct.)	1092
Hamilton Yellow Cab Limited and Transportation Unlimited Inc.; Re R.W.D.S.U., AFL-CIO-CLC and the Ontario Labour Relations Board .....	(July)	824
Harbridge & Cross Limited; Re Ontario Council of the International Brotherhood of Painters and Allied Trades and Ontario Labour Relations Board .....	(July)	824
Harbridge and Cross Limited; Re Ontario Council of Painters and Allied Trades and Ontario Labour Relations Board .....	(Oct.)	1093
Knob Hill Farms Limited, The Ontario Labour Relations Board and U.F.C.W., Local 206 and; Re Donna Baydak on behalf of a Group of 156 Employees .....	(June)	697
Ministry of Community and Social Services, The Crown in Right of Ontario and Ontario Labour Relations Board; Re Douglas Lloyd .....	(Mar.)	316
Ministry of Community and Social Services, The Crown in Right of Ontario and Ontario Labour Relations Board; Re Douglas Lloyd .....	(June)	698
Ontario Hydro; Re Ontario Labour Relations Board, The Society of Ontario Professional and Administrative Employees, C.U.P.E. - C.L.C. Ontario Hydro Employees Union, Local 1000, The Coalition to Stop Certification of the Society on behalf of certain Employees, Tom Stevens, C.S. Stevenson, Michelle Morrissey-O'Ryan, George Orr .....	(June)	698
Pinkerton's of Canada Ltd.; Re O.L.R.B., Richard Bibault, C.G.A., National Protective Services Company Limited, The Board of Management for the Metropolitan Toronto Zoo, Burns International Security Services Limited, Gordon A. Southorn, Wackenhut of Canada Limited,		

Shane Freeman, U.S.W.A., Larry Bishop, Inco Limited, International Union United Plant Guard Workers of America .....(Aug.)	924
Plaza Fibreglas Manufacturing Limited, Plaza Electroplating Limited, Citcor Manufacturing Ltd., Sabina Citron, Citron Automotive Division of; Re U.S.W.A. and the Ontario Labour Relations Board ..... (June)	707
Plaza Fibreglas Manufacturing Limited, Sabina Citron, Citron Automotive Division of, Plaza Electro-Plating Limited, Citcor Manufacturing Ltd., and the Ontario Labour Relations Board; Re U.S.W.A. .... (May)	528
Windsor, The Board of Education for the City of; Re U.A., Local 552 and Ontario Labour Rela- tions Board ..... (Feb.)	231
Windsor, The Board of Education for the City of; Re U.A., Local 552 and Ontario Labour Rela- tions Board ..... (June)	707



# SUBJECT INDEX 1989

Abandonment - Bargaining Rights - Crown Transfer - Employer - Crown contracting out snow plowing, garbage pick-up, janitorial services, marking of trees and provincial park operations to individuals, partnerships and corporations - Whether contractors bound by collective agreement between union and Crown - Union knew of contracting out soon after it began in the early 1980's - Whether union abandoned bargaining rights - Whether contractors need to have employees to be "employers" within the meaning of the Act -Board declaring that all contractors bound by collective agreement  DUNNING PAVING LIMITED, THE CROWN IN RIGHT OF ONTARIO AS REPR - SENTED BY THE MINISTRY OF TRANSPORTATION, AND; RE O.P.S.E.U.; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF NATURAL RESOURCES, AND BARRY LIGHTFOOT; RE JOHN KNIGHT AND LORRAINE NORRIS C.O.B. AS AGASSIZ FORESTRY/ENVIRONMENTAL SERVICES; RE JOHN MCCORMACK; RE ELSIE MCCORMACK; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVEN- MENT SERVICES, AND WAYNE FORBES C.O.B. AS FORBES JANITORIAL SERVICES..... (July)	714
Abandonment - Bargaining Unit - Certification - Applicant holding bargaining rights for both full and part-time employees in 1976 - Applicant agreeing to exclude some of these employees from the collective agreements negotiated since then - Applicant not actively seeking to represent these employees - Employer arguing that applicant can only regain bargaining rights for these people at the bargaining table - Board finding that bargaining rights abandoned - No legal bar to certification application - Certificate issuing  MONTREAL HOUSE, 408762 ONTARIO LIMITED O/A; RE H.E.R.E., LOCAL 604 A.F.L.-C.I.O., O.F.L.-C.L.C. .... (Jan.)	29
Abandonment - Construction Industry - Union certified for predecessor company in 1972 - Prede- cessor company employing non-union labour for intermittent subsequent construction work - Union failing to take reasonable steps to monitor activity at fixed location of predecessor company - Board finding abandonment of bargaining rights - Union's related employer and sale of business applications for successor company dismissed  AMERI-CANA MOTEL LIMITED AND 603185 ONTARIO LIMITED; RE C.J.A., LOCAL 38..... (Oct.)	1009
Accreditation - Board able to define unit of employers and satisfy double majority test whether or not two of employers included - Accreditation should not be delayed while Board resolves issues which do not affect final disposition - Accreditation orders issuing  METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION; RE I.U.O.E., LOCAL 793; RE ONTARIO CONCRETE AND DRAIN CONTRACTORS ASSOCIATION; RE L.I.U.N.A., LOCAL 183; RE TEAM- STERS' UNION, LOCAL UNION 230; RE METROPOLITAN TORONTO ROAD BUILDERS ASSOCIATION; RE CANADIAN AUTOMATIC SPRINKLER ASSOCI- ATION; RE U.A., LOCAL 46; RE ONTARIO PIPE TRADES COUNCIL OF U.A.; RE U.A., LOCAL 853; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; RE TORONTO CONSTRUCTION ASSOCIATION, GENERAL CONTRACTORS SECTION; RE SARNIA CONSTRUCTION ASSOCIATION; RE CONSTRUCTION ASSOCIATION OF THUNDER BAY; RE SUDBURY CON- STRUCTION ASSOCIATION; RE ELECTRICAL POWER SYSTEMS CONSTRUC- TION ASSOCIATION; RE ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION; RE THE RESIDENTIAL LOW-RISE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO AND VICINITY; RE THE	

HEAVY CONSTRUCTION ASSOCIATION OF TORONTO; RE TORONTO HOUS-  
ING LABOUR BUREAU ..... (Dec.)

1226

Accreditation - Board finding all employers of journeymen electricians and apprentices for whom the Electrical Workers Union has bargaining rights in the residential sector in Board area 15 and Lanark County constitute a unit of employees appropriate for collective bargaining - Accreditation certificate issuing

ELECTRICAL CONTRACTORS' ASSOCIATION OF OTTAWA, THE; RE I.B.E.W.,  
LOCAL 586 ..... (Apr.)

344

Accreditation - Construction Industry - Practice and Procedure - Board not compiling a Final Schedule "F" - Schedule consists of employers for whose employees the union has bargaining rights but who have not employed any of the represented employees within the prior year - Neither the number or identity of these employers is a factor in the Board's determination of whether the applicant should be accredited but applicant would have bargaining rights for these employers - Issue of whether these employees are bound by the accreditation order can be determined where a denial of bargaining rights arises in subsequent litigation - Unions agreeing to fulfil specific notice obligations and to waive any claim to damages in the first claim against each of these employers - Accreditation certificates issued for all employers of employees engaged in the operation of heavy equipment and truck drivers in the roads, sewers and watermains, and heavy engineering sectors in the Ottawa area

NATIONAL CAPITAL ROAD BUILDERS ASSOCIATION; RE I.U.O.E., LOCAL  
793 AND TEAMSTERS, LOCAL 91; RE THE OPERATING ENGINEERS  
EMPLOYER BARGAINING AGENCY; RE THE LABOURERS EMPLOYER BAR-  
GAINING AGENCY ..... (Jan.)

31

Adjournment - Certification - Charter of Rights and Freedoms - Issue in certification cases involving the effect of the Charter on the security guard provision in the Act - Whether Charter issue should be postponed pending the release of the final decision in *Cuddy Chicks* concerning the Board's jurisdiction to deal with Charter issues - Adjournment denied - Labour relations considerations favouring expedition

PINKERTON'S OF CANADA LTD.; RE C.G.A.; RE RICHARD BIBEALUT; RE  
NATIONAL PROTECTIVE SERVICES COMPANY LIMITED; RE GOERGE  
FAULKENBURG; RE BOARD OF MANAGEMENT FOR THE METROPOLITAN  
TORONTO ZOO; RE INTERNATIONAL UNION UNITED PLANT GUARDS,  
LOCAL 1962; RE RON SAXTON; RE BURNS INTERNATIONAL SECURITY SER-  
VICES LIMITED; RE GORDON A. SOUTHORN; RE WACKENHUT OF CANADA  
LIMITED; RE SHANE FREEMAN; RE U.S.W.A.; RE LARRY BISHOP ..... (July)

783

Adjournment - Certification - Charter of Rights and Freedoms - Judicial Review - Stay - Issue in certification cases involving the effect of the Charter on the security guard provision in the Act - Whether Charter issue should be postponed pending the release of the final decision in *Cuddy Chicks* concerning the Board's jurisdiction to deal with Charter issues - Adjournment denied - Labour relations considerations favouring expedition - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board exceeded its jurisdiction in attempting to hear a Charter challenge and failed to observe the principles of natural justice by forcing the parties to submit to a procedure that would not afford them an

opportunity to know the case they had to meet - Judicial review dismissed by Divisional Court

PINKERTON'S OF CANADA LTD.; RE O.L.R.B., RICHARD BIBEALT, C.G.A., NATIONAL PROTECTIVE SERVICES COMPANY LIMITED, THE BOARD OF MANAGEMENT FOR THE METROPOLITAN TORONTO ZOO, BURNS INTERNATIONAL SECURITY SERVICES LIMITED, GORDON A. SOUTHRN, WACKENHUT OF CANADA LIMITED, SHANE FREEMAN, U.S.W.A., LARRY BISHOP, INCO LIMITED, INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA.....(Aug.) 924

Adjournment - Evidence - First Contract Arbitration - Practice and Procedure - Privilege - Board ruling that evidence of discussions between a mediator or conciliation officer and one of the parties was not admissible -Discussions involving Board Officer also not admitted - Admission would undermine the settlement process and the parties had agreed that the discussions were without prejudice - Respondent seeking an adjournment to retain other counsel because its own counsel would become a witness -Impossible to finish case within 30 day time limit - Time limits in section 40a(2) are directory not mandatory - Adjournment granted

DEL EQUIPMENT LIMITED, DEL HYDRAULICS LIMITED AND EDINBURGH ELECTRIC LIMITED; RE C.A.W. AND ITS LOCAL 303 .....(Jan.) 19

Adjournment - Evidence - Jurisdictional Dispute - Parties - Practice and Procedure - Demolition association requesting permission to intervene and asking for an adjournment - Association had not filed an intervention, attended the pre-hearing conference, or retained counsel - Board denying adjournment - Merits panel to decide intervenor status issue - Board limiting the evidence of area and employer practice it will admit - Evidence limited to the demolition of similar structures in an operating environment in the province of Ontario - Statute compelling Board to inquire into work involving the same or similar type of structure in the same or similar type of environment

FOSTER WHEELER LIMITED, L.I.U.N.A., LOCAL 1089 AND; RE B.B.F., LOCAL 128 ..... (Feb.) 128

Adjournment - Evidence - Witness - Principal of respondent refusing to produce employment forms without covering over personal information - No lawful excuse for refusing to produce the documents as ordered by the Board - Board stating case to Divisional Court - Court ordering Board to give witness another opportunity to produce - Board scheduling another hearing at which adjournment request by respondent denied - Witness continuing to refuse production - Matter adjourned

PLAZA FIBREGLAS MANUFACTURING LIMITED AND PLAZA ELECTROPLATING LTD. AND CITRON AUTOMOTIVE INDUSTRIES AND SABINA CITRON; RE U.S.W.A..... (May) 479

Bargaining Rights - Abandonment - Crown Transfer - Employer - Crown contracting out snow plowing, garbage pick-up, janitorial services, marking of trees and provincial park operations to individuals, partnerships and corporations - Whether contractors bound by collective agreement between union and Crown - Union knew of contracting out soon after it began in the early 1980's - Whether union abandoned bargaining rights - Whether contrac-



tors need to have employees to be “employers” within the meaning of the Act -Board declaring that all contractors bound by collective agreement

DUNNING PAVING LIMITED, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, AND; RE O.P.S.E.U.; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF NATURAL RESOURCES, AND BARRY LIGHTFOOT; RE JOHN KNIGHT AND LORRAINE NORRIS C.O.B. AS AGASSIZ FORESTRY/ENVIRONMENTAL SERVICES; RE JOHN MCCORMACK; RE ELSIE MCCORMACK; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES, AND WAYNE FORBES C.O.B. AS FORBES JANITORIAL SERVICES ..... (July)

714

Bargaining Rights - Certification - First Contract Arbitration - Reconsideration - Trade Union Status - Applicant seeking to amend its name - Board permitting name to be amended - No prejudice to respondent - First contract application adjourned sine die pending the disposition of the union’s request for reconsideration in a certification matter

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Aug.)

852

Bargaining Rights - Construction Industry Grievance - Judicial Review - Whether Painters Union acquired bargaining rights by means of a working agreement signed between the Toronto Building and Construction Trades Council and Harbridge - Harbridge held bound to Painters Union provincial agreement - Breach by Harbridge of sub-contracting clause - Harbridge bringing application for judicial review on the grounds that, *inter alia*, the Board’s interpretation of the working agreement was patently unreasonable - Judicial review dismissed by Divisional Court

HARBRIDGE & CROSS LIMITED; RE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND ONTARIO LABOUR RELATIONS BOARD ..... (July)

824

Bargaining Rights - Sale of a Business - Company buying patent and assets for security technology - Successorship not precluded by failure to buy manufacturing equipment since patents and expertise essence of commercial activity - Board finding no difficulty in obtaining equipment or contracting out - Bargaining rights for “greater Ottawa area” extending to company facilities at Carp - Unit description to be interpreted liberally since expansion outside Ottawa possible and parties not intending to limit bargaining rights to existing locations - Company arguing union constitution not allowing membership of employees of successor in sold business - Not necessary for union to show could have been certified to represent employees in question - Declaration of successorship and intermingling - Representation vote ordered

SENSTAR CORPORATION; RE SALARIED EMPLOYEES ALLIANCE COMDEV... (Nov.)

1159

Bargaining Unit - Abandonment - Certification - Applicant holding bargaining rights for both full and part-time employees in 1976 - Applicant agreeing to exclude some of these employees from the collective agreements negotiated since then - Applicant not actively seeking to represent these employees - Employer arguing that applicant can only regain bargaining rights for these people at the bargaining table - Board finding that bargaining rights abandoned - No legal bar to certification application - Certificate issuing

MONTREAL HOUSE, 408762 ONTARIO LIMITED O/A; RE H.E.R.E., LOCAL 604 A.F.L.-C.I.O., O.F.L.-C.L.C ..... (Jan.)

29

Bargaining Unit - Certification - Construction Industry - Applicant’s standard construction industry unit described in terms of journeymen and apprentice electricians - Appropriate to include in the unit for certification purposes only employees who are entitled to work in the

- trade pursuant to the *Apprenticeship and Tradesmen's Qualification Act* - Redundant to use words "qualified", "certified" or "registered" to describe either journeymen or apprentice electricians
- P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105; RE P & M ELECTRIC LIMITED, POMICO HOLDINGS INC..... (June) 638
- Bargaining Unit - Certification - Construction Industry - Board looking at issue of how S.117(b) applies to the issue of which employees should be included on the list of employees - S.117(b) not dictating that off-site shop employees must be included in any particular unit - Designation order requiring that both on and off-site mechanics be included in an operating engineers unit - *Gilvesy* "work done on date of application test" suitable for resolving disputes with respect to off-site employees
- WRAYMAR CONSTRUCTION AND RENTAL SALES LTD.; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES..... (June) 682
- Bargaining Unit - Certification - Construction Industry - Council of trade unions applying under s.144(1) for certification for unit including ICI sector - Applicant later requesting that its application be amended to one under s.144(3) to exclude the ICI sector - Whether council of trade unions can make an application under s.144(3) - Whether applicant attempting to gerrymander - Applicant allowed to amend its application
- M.W.M. CONSTRUCTION OF KITCHENER LIMITED; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE GROUP OF EMPLOYEES..... (June) 635
- Bargaining Unit - Certification - Construction Industry - Dependent Contractor - Employee - Board finding workers to be dependent contractors - Board declining to determine whether worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing
- SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 ..... (Nov.) 1181
- Bargaining Unit - Certification - Construction Industry - Employer - Employer arguing an "all employee" unit was appropriate because it engaged in both construction and non-construction work with the same work force - Board holding that where a person operates a business in the construction industry a union is entitled to be certified pursuant to the construction industry provisions of the Act for the employees engaged in the construction part of the business - Employer's construction and non-construction activities not inextricably tied - Appropriate unit one consisting of construction labourers - Employer engaged in the restoration of the waterproofing capabilities of underground garages - Work considered to be repair and not maintenance - Work falling within the construction industry
- KEITH HOLDSWORTH CONSULTING LTD.; RE L.I.U.N.A., LOCAL 183 ..... (June) 619
- Bargaining Unit - Certification - Construction Industry - Employer - Whether rebricking of furnace in a smelter plant is maintenance or construction work - Respondent found to be an employer in the construction industry - Certificates issuing
- BRIECAN CONST. LIMITED; RE U.A., LOCAL 800 ..... (May) 417
- Bargaining Unit - Certification - Construction Industry - Membership Evidence - Practice and Procedure - Respondent making one non-pay allegation - Respondent suggesting the Board's investigation of the membership evidence ought to have extended beyond the respondent's specific allegation - Board does not conduct an investigation unless the membership evidence is irregular on its face or it receives specific particularized allegations of impropriety - Respondent not permitted to inspect membership evidence - Board satisfied

with sufficiency of membership evidence and Form 80 declaration - Board rejecting argument that persons other than construction labourers should be included in labourers unit on community of interest grounds

GRANT CONSTRUCTION, DIVISION OF MALACHY GRANT AND ASSOCIATES;  
RE L.I.U.N.A., LOCAL 506..... (July) 766

Bargaining Unit - Certification - Construction Industry - Plumbers Union seeking clarity note indicating that welders working in the plumbing trade were employees in the unit - Board's concern is that persons employed be lawfully so engaged in certification applications relating to units described in terms of compulsory certified trades - Welding not a separate trade nor the subject of a designation order - Board declining to give clarity note for welders

O.J. PIPELINES INCORPORATED; RE U.A., LOCAL 800 ..... (Sept.) 976

Bargaining Unit - Certification - Construction Industry - Reconsideration - Request that Board reconsider its interpretation of the MTABA collective agreement and its decision to allow the Carpenters Union to carve out its craft from the concrete forming agreement - Reconsideration dismissed

ELLIS-DON LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE THE FORM WORK COUNCIL OF ONTARIO; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; RE MILNE & NICHOLLS LTD.; RE MOLLENHAUER LIMITED ..... (Mar.) 234

Bargaining Unit - Certification - Construction Industry - Union applying for unit of all labourers in the ICI sector province-wide plus all labourers in all other sectors in Board area 8 - Employer arguing that labourers in Board area 18 should be included in the unit - Board concluding that employees in Board area 18 not properly on employee list

BEAVERBROOK ESTATES INC.; RE L.I.U.N.A., LOCAL 183; RE GROUP OF EMPLOYEES ..... (Apr.) 322

Bargaining Unit - Certification - Construction Industry - Union making certification application under s.144 for the ICI sector and all other sectors in Board area 26 - Employer having employees in Board area 6 - Whether appropriate bargaining unit should be described in terms of both Board areas - Union not required to apply for more than one Board area

BELING CEMENT CONSTRUCTION LIMITED; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE GROUP OF EMPLOYEES ..... (July) 709

Bargaining Unit - Certification - Construction Industry - Union seeking to carve out craft unit of concrete form workers from broader existing unit - Board reviewing jurisprudence on displacement applications in construction industry - Board following general practice of allowing craft to carve out in construction industry and having description of non-ICI portion of bargaining unit minor ICI portion

SHEARWALL FORMING (EAST) LTD.; RE C.J.A., LOCAL 27; RE THE FORM WORK COUNCIL OF ONTARIO; RE AUTOMATIC STRUCTURES LTD. .... (Dec.) 1254

Bargaining Unit - Certification - Construction Industry - Whether surveyors should be included in operating engineers bargaining unit - Board always describes ICI sector bargaining units in a manner consistent with the designation order - Operating engineers designation order including surveyors - Board jurisprudence indicating that the applicant has been granted differently worded certificates - Both surveyors and operators must be included in a bargaining unit applied for by the applicant - No clarity note required in that respect

KRAFT CONSTRUCTION COMPANY (1978) LTD.; RE I.U.O.E., LOCAL 793. (Feb.) 169

Bargaining Unit - Certification - Dependent Contractor - Judicial Review - Stay - Board certifying union for two units of employees of taxi company, one of owner-operators and the other of



drivers - Taxi company bringing motion to stay Board decision - Motion dismissed by Supreme Court of Ontario

HAMILTON YELLOW CAB LIMITED AND TRANSPORTATION UNLIMITED INC.; RE R.W.D.S.U., AFL-CIO-CLC AND THE ONTARIO LABOUR RELATIONS BOARD.....(July) 824

Bargaining Unit - Certification - Dependent Contractor - Reconsideration - Board certifying union for two units, one of owner operators/dependent contractors and the other of drivers - Board declining to reconsider its decision

HAMILTON YELLOW CAB COMPANY LIMITED, FLEET TAXI, YELLOW TAXI, TRANSPORTATION UNLIMITED INC., D. J. VAN BOORT ET AL; RE R.W.D.S.U., AFL-CIO-CLC ..... (Feb.) 144

Bargaining Unit - Certification - Employee - Employer - Whether a practice exists with respect to the use of part-time employees sufficient to warrant their exclusion from the bargaining unit - Use of part-timers restricted to 1988 - Board satisfied that a practice existed after looking at the nature of the business - Employer engaged in the preparation of soil for the home garden market - Employer not engaged in the business of agriculture and/or horticulture - Certificate issuing

HILLVIEW FARMS LIMITED; RE U.F.C.W., LOCAL 1000A; RE GROUP OF EMPLOYEES.....(Mar.) 59

Bargaining Unit - Certification - Employee - Individual riding around with employer's driver and helping to unload materials on an occasional basis - Individual given small sums of money or meal in return - Employer arguing that individual was a volunteer rather than an employee - Nature of employment relationship analyzed - Board finding that individual was a casual employee - Individual placed in unit with single other full-time employee - Certificate issuing

CALVANO LUMBER & TRIM CO. LTD.; RE C.J.A., LOCAL 27..... (Apr.) 337

Bargaining Unit - Certification - Employer having main operation in Kingston - Two service mechanics working out of Belleville - Whether sufficient community of interest to include mechanics in bargaining unit - Board considering *Usarco* factors and its policy of certifying on a municipal-wide basis - Board finding that sufficient overlap of work and integration of functions to consider this a case where the policy against cross-municipality bargaining units is not applicable - Appropriate unit including both groups of employees

COCA-COLA LTD.; RE U.F.C.W.; RE GROUP OF EMPLOYEES .....(Jan.) 1

Bargaining Unit - Certification - Employer requesting twenty hour cut-off for full-time unit to reflect workplace distinction between permanent and casual employees - Union requesting twenty-four hour cut-off and citing reliance during organizing on Board's twenty-four hour "rule" - Board not fettering discretion in taking into account labour relations community's interest in consistency and predictability - Board considering reliance interests, right of self-organization, potential for gerrymandering, lack of agreement between parties - Terms of employment often unilaterally imposed by employer and may not be reliable indicators of community of interest - Effect of employer's request disenfranchisement of casual employees - Standard division not causing serious labour relations problems - Facts not sufficiently exceptional to warrant departure from normal practice

VAUGHAN PUBLIC LIBRARIES; RE C.U.P.E. .... (Dec.) 1282

Bargaining Unit - Certification - Pre-Hearing Vote - Related Employer - Union seeking to represent a unit of drivers and owner-operators working "under the banner" of the respondent airline limousine companies - Three of named respondents declared one employer - Request to exclude part-time employees and students rejected - Allegations of voting day

and membership irregularities dismissed - Board not ruling on the merits of the argument that non-driving brokers should be declared one employer with the named respondents - Certificates issuing

AIRLINE LIMOUSINE SERVICES LIMITED, MCDONNELL-RONALD LIMOUSINE SERVICE LIMITED OPERATING AS; RE TEAMSTERS UNION, LOCAL 938; RE MCINTOSH LIMOUSINE SERVICE LIMITED; RE AIRLIFT LIMOUSINE SERVICES LIMITED; RE AIR CAB LIMOUSINE SERVICES (1985) LIMITED; RE AAROPORT LIMOUSINE SERVICES LTD ..... (May)

395

Bargaining Unit - Certification - Reconsideration - Union and employer requesting that Board amend the street address on the certificate to reflect a change in location - No employee raising an objection - No intervening collective agreement - Board agreeing to request in these narrow and unique circumstances

NATIONAL TRUST; RE UNION OF BANK EMPLOYEES (ONTARIO), LOCAL 2104, CANADIAN LABOUR CONGRESS; RE JANEEN G. SNARE ..... (Apr.)

369

Bargaining Unit - Certification - School Boards and Teachers Collective Negotiations Act - Whether supply instructors should be included in a unit of occasional teachers - Evolution in collective bargaining practice toward inclusion of supply instructors with occasional teachers in a single unit - Unit including both supply instructors and occasional teachers appropriate - Certificates issuing

MUSKOKA BOARD OF EDUCATION, THE; RE O.P.S.T.F.; RE O.S.S.T.F.; RE THE PEEL BOARD OF EDUCATION ..... (July)

775

Bargaining Unit - Certification - Union seeking to represent group of drivers owning neither car nor plate - Employer arguing unit of all dependent contractors more appropriate - Board affirming more than one unit may be appropriate - Unit proposed by union having distinct community of interest - "Pure driver" units recognized elsewhere and not causing serious bargaining problems or prejudice to public interest - Board accepting unit proposed by union

U-NEED-A-CAB LIMITED; RE R.W.D.S.U., AFL:CIO:CLC.; RE 751341 ONTARIO LTD. OPERATING AS M & M HOLDINGS, AND M & M AUTO CENTRE SOUTH END CAB INC. .... (Dec.)

1275

Bargaining Unit - Collective Agreement - Employee - Evidence - Termination - Union arguing that bargaining unit included a large number of temporary agency workers - Collective agreement describing "all employee" unit - Agency workers not included on list at certification - Union never seeking to represent agency workers until termination application filed - Board determining that agency workers should not be treated as employees "in the unit" for purposes of the termination application - Relisted for hearing on issue of voluntariness of petition

WESTBURNE INDUSTRIAL ENTERPRISES LTD., NEDCO, DIVISION OF; RE TISH VASSAIR; RE TEAMSTERS UNION, LOCAL 419 ..... (June)

658

Certification - Abandonment - Bargaining Unit - Applicant holding bargaining rights for both full and part-time employees in 1976 - Applicant agreeing to exclude some of these employees from the collective agreements negotiated since then - Applicant not actively seeking to represent these employees - Employer arguing that applicant can only regain bargaining rights for these people at the bargaining table - Board finding that bargaining rights abandoned - No legal bar to certification application - Certificate issuing

MONTREAL HOUSE, 408762 ONTARIO LIMITED O/A; RE H.E.R.E., LOCAL 604, A.F.L.-C.I.O., O.F.L.-C.L.C. .... (Jan.)

29

Certification - Adjournment - Charter of Rights and Freedoms - Issue in certification cases

involving the effect of the Charter on the security guard provision in the Act - Whether Charter issue should be postponed pending the release of the final decision in *Cuddy Chicks* concerning the Board's jurisdiction to deal with Charter issues - Adjournment denied - Labour relations considerations favouring expedition

PINKERTON'S OF CANADA LTD.; RE C.G.A.; RE RICHARD BIBEALT; RE NATIONAL PROTECTIVE SERVICES COMPANY LIMITED; RE GOERGE FAULKENBURG; RE BOARD OF MANAGEMENT FOR THE METROPOLITAN TORONTO ZOO; RE INTERNATIONAL UNION UNITED PLANT GUARDS, LOCAL 1962; RE RON SAXTON; RE BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE GORDON A. SOUTHORN; RE WACKENHUT OF CANADA LIMITED; RE SHANE FREEMAN; RE U.S.W.A.; RE LARRY BISHOP..... (July)

783

Certification - Adjournment - Charter of Rights and Freedoms - Judicial Review - Stay - Issue in certification cases involving the effect of the Charter on the security guard provision in the Act - Whether Charter issue should be postponed pending the release of the final decision in *Cuddy Chicks* concerning the Board's jurisdiction to deal with Charter issues - Adjournment denied - Labour relations considerations favouring expedition - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board exceeded its jurisdiction in attempting to hear a Charter challenge and failed to observe the principles of natural justice by forcing the parties to submit to a procedure that would not afford them an opportunity to know the case they had to meet - Judicial review dismissed by Divisional Court

PINKERTON'S OF CANADA LTD.; RE O.L.R.B., RICHARD BIBEALT, C.G.A., NATIONAL PROTECTIVE SERVICES COMPANY LIMITED, THE BOARD OF MANAGEMENT FOR THE METROPOLITAN TORONTO ZOO, BURNS INTERNATIONAL SECURITY SERVICES LIMITED, GORDON A. SOUTHORN, WACKENHUT OF CANADA LIMITED, SHANE FREEMAN, U.S.W.A., LARRY BISHOP, INCO LIMITED, INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA..... (Aug.)

924

Certification - Bargaining Rights - First Contract Arbitration - Reconsideration - Trade Union Status - Applicant seeking to amend its name - Board permitting name to be amended - No prejudice to respondent - First contract application adjourned sine die pending the disposition of the union's request for reconsideration in a certification matter

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Aug.)

852

Certification - Bargaining Unit - Construction Industry - Applicant's standard construction industry unit described in terms of journeymen and apprentice electricians - Appropriate to include in the unit for certification purposes only employees who are entitled to work in the trade pursuant to the *Apprenticeship and Tradesmen's Qualification Act* - Redundant to use words "qualified", "certified" or "registered" to describe either journeymen or apprentice electricians

P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105; RE P & M ELECTRIC LIMITED, POMICO HOLDINGS INC..... (June)

638

Certification - Bargaining Unit - Construction Industry - Board looking at issue of how S.117(b) applies to the issue of which employees should be included on the list of employees - S.117(b) not dictating that off-site shop employees must be included in any particular unit - Designation order requiring that both on and off-site mechanics be included in an operating



- engineers unit - *Gilvesy* "work done on date of application test" suitable for resolving disputes with respect to off-site employees
- WRAYMAR CONSTRUCTION AND RENTAL SALES LTD.; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES..... (June) 682
- Certification - Bargaining Unit - Construction Industry - Council of trade unions applying under s.144(1) for certification for unit including ICI sector - Applicant later requesting that its application be amended to one under s.144(3) to exclude the ICI sector - Whether council of trade unions can make an application under s.144(3) - Whether applicant attempting to gerrymander - Applicant allowed to amend its application
- M.W.M. CONSTRUCTION OF KITCHENER LIMITED; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE GROUP OF EMPLOYEES..... (June) 635
- Certification - Bargaining Unit - Construction Industry - Dependent Contractor - Employee - Board finding workers to be dependent contractors - Board declining to determine whether worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing
- SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 .....(Nov.) 1181
- Certification - Bargaining Unit - Construction Industry - Employer - Employer arguing an "all employee" unit was appropriate because it engaged in both construction and non-construction work with the same work force - Board holding that where a person operates a business in the construction industry a union is entitled to be certified pursuant to the construction industry provisions of the Act for the employees engaged in the construction part of the business - Employer's construction and non-construction activities not inextricably tied - Appropriate unit one consisting of construction labourers - Employer engaged in the restoration of the waterproofing capabilities of underground garages - Work considered to be repair and not maintenance - Work falling within the construction industry
- KEITH HOLDSWORTH CONSULTING LTD.; RE L.I.U.N.A., LOCAL 183 ..... (June) 619
- Certification - Bargaining Unit - Construction Industry - Employer - Whether rebricking of furnace in a smelter plant is maintenance or construction work - Respondent found to be an employer in the construction industry - Certificates issuing
- BRIECAN CONST. LIMITED; RE U.A., LOCAL 800 ..... (May) 417
- Certification - Bargaining Unit - Construction Industry - Membership Evidence - Practice and Procedure - Respondent making one non-pay allegation - Respondent suggesting the Board's investigation of the membership evidence ought to have extended beyond the respondent's specific allegation - Board does not conduct an investigation unless the membership evidence is irregular on its face or it receives specific particularized allegations of impropriety - Respondent not permitted to inspect membership evidence - Board satisfied with sufficiency of membership evidence and Form 80 declaration - Board rejecting argument that persons other than construction labourers should be included in labourers unit on community of interest grounds
- GRANT CONSTRUCTION, DIVISION OF MALACHY GRANT AND ASSOCIATES; RE L.I.U.N.A., LOCAL 506..... (July) 766
- Certification - Bargaining Unit - Construction Industry - Plumbers Union seeking clarity note indicating that welders working in the plumbing trade were employees in the unit - Board's concern is that persons employed be lawfully so engaged in certification applications relating to units described in terms of compulsory certified trades - Welding not a separate trade nor the subject of a designation order - Board declining to give clarity note for welders
- O.J. PIPELINES INCORPORATED; RE U.A., LOCAL 800 ..... (Sept.) 976

- Certification - Bargaining Unit - Construction Industry - Reconsideration - Request that Board reconsider its interpretation of the MTABA collective agreement and its decision to allow the Carpenters Union to carve out its craft from the concrete forming agreement - Reconsideration dismissed
- ELLIS-DON LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE THE FORM WORK COUNCIL OF ONTARIO; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; RE MILNE & NICHOLLS LTD.; RE MOLLENHAUER LIMITED .....(Mar.) 234
- Certification - Bargaining Unit - Construction Industry - Union applying for unit of all labourers in the ICI sector province-wide plus all labourers in all other sectors in Board area 8 - Employer arguing that labourers in Board area 18 should be included in the unit - Board concluding that employees in Board area 18 not properly on employee list
- BEAVERBROOK ESTATES INC.; RE L.I.U.N.A., LOCAL 183; RE GROUP OF EMPLOYEES .....(Apr.) 322
- Certification - Bargaining Unit - Construction Industry - Union making certification application under s.144 for the ICI sector and all other sectors in Board area 26 - Employer having employees in Board area 6 - Whether appropriate bargaining unit should be described in terms of both Board areas - Union not required to apply for more than one Board area
- BELING CEMENT CONSTRUCTION LIMITED; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE GROUP OF EMPLOYEES .....(July) 709
- Certification - Bargaining Unit - Construction Industry - Union seeking to carve out craft unit of concrete form workers from broader existing unit - Board reviewing jurisprudence on displacement applications in construction industry - Board following general practice of allowing craft to carve out in construction industry and having description of non-ICI portion of bargaining unit minor ICI portion
- SHEARWALL FORMING (EAST) LTD.; RE C.J.A., LOCAL 27; RE THE FORM WORK COUNCIL OF ONTARIO; RE AUTOMATIC STRUCTURES LTD. ....(Dec.) 1254
- Certification - Bargaining Unit - Construction Industry - Whether surveyors should be included in operating engineers bargaining unit - Board always describes ICI sector bargaining units in a manner consistent with the designation order - Operating engineers designation order including surveyors - Board jurisprudence indicating that the applicant has been granted differently worded certificates - Both surveyors and operators must be included in a bargaining unit applied for by the applicant - No clarity note required in that respect
- KRAFT CONSTRUCTION COMPANY (1978) LTD.; RE I.U.O.E., LOCAL 793. (Feb.) 169
- Certification - Bargaining Unit - Construction Industry - Whether surveyors should be included in operating engineers bargaining unit - Board always describes ICI sector bargaining units in a manner consistent with the designation order - Operating engineers designation order including surveyors - Board jurisprudence indicating that the applicant has been granted differently worded certificates - Both surveyors and operators must be included in a bargaining unit applied for by the applicant - No clarity note required in that respect
- KRAFT CONSTRUCTION COMPANY (1978) LTD.; RE I.U.O.E., LOCAL 793. (Feb.) 169
- Certification - Bargaining Unit - Dependent Contractor - Judicial Review - Stay - Board certifying union for two units of employees of taxi company, one of owner-operators and the other of drivers - Taxi company bringing motion to stay Board decision - Motion dismissed by Supreme Court of Ontario
- HAMILTON YELLOW CAB LIMITED AND TRANSPORTATION UNLIMITED INC.; RE R.W.D.S.U., AFL-CIO-CLC AND THE ONTARIO LABOUR RELATIONS BOARD.....(July) 824

Certification - Bargaining Unit - Dependent Contractor - Reconsideration - Board certifying union for two units, one of owner operators/dependent contractors and the other of drivers - Board declining to reconsider its decision

HAMILTON YELLOW CAB COMPANY LIMITED, FLEET TAXI, YELLOW TAXI, TRANSPORTATION UNLIMITED INC., D. J. VAN BOORT ET AL; RE R.W.D.S.U., AFL-CIO-CLC ..... (Feb.)

144

Certification - Bargaining Unit - Employee - Employer - Whether a practice exists with respect to the use of part-time employees sufficient to warrant their exclusion from the bargaining unit - Use of part-timers restricted to 1988 - Board satisfied that a practice existed after looking at the nature of the business - Employer engaged in the preparation of soil for the home garden market - Employer not engaged in the business of agriculture and/or horticulture - Certificate issuing

HILLVIEW FARMS LIMITED; RE U.F.C.W., LOCAL 1000A; RE GROUP OF EMPLOYEES ..... (Mar.)

259

Certification - Bargaining Unit - Employee - Individual riding around with employer's driver and helping to unload materials on an occasional basis - Individual given small sums of money or meal in return - Employer arguing that individual was a volunteer rather than an employee - Nature of employment relationship analyzed - Board finding that individual was a casual employee - Individual placed in unit with single other full-time employee - Certificate issuing

CALVANO LUMBER & TRIM CO. LTD.; RE C.J.A., LOCAL 27 ..... (Apr.)

337

Certification - Bargaining Unit - Employer having main operation in Kingston - Two service mechanics working out of Belleville - Whether sufficient community of interest to include mechanics in bargaining unit - Board considering *Usarco* factors, and its policy of certifying on a municipal-wide basis - Board finding that sufficient overlap of work and integration of functions to consider this a case where the policy against cross-municipality bargaining units is not applicable - Appropriate unit including both groups of employees

COCA-COLA LTD.; RE U.F.C.W.; RE GROUP OF EMPLOYEES ..... (Jan.)

1

Certification - Bargaining Unit - Employer requesting twenty hour cut-off for full-time unit to reflect workplace distinction between permanent and casual employees - Union requesting twenty-four hour cut-off and citing reliance during organizing on Board's twenty-four hour "rule" - Board not fettering discretion in taking into account labour relations community's interest in consistency and predictability - Board considering reliance interests, right of self-organization, potential for gerrymandering, lack of agreement between parties - Terms of employment often unilaterally imposed by employer and may not be reliable indicators of community of interest - Effect of employer's request disenfranchisement of casual employees - Standard division not causing serious labour relations problems - Facts not sufficiently exceptional to warrant departure from normal practice

VAUGHAN PUBLIC LIBRARIES; RE C.U.P.E. .... (Dec.)

1282

Certification - Bargaining Unit - Pre-Hearing Vote - Related Employer - Union seeking to represent a unit of drivers and owner-operators working "under the banner" of the respondent airline limousine companies - Three of named respondents declared one employer - Request to exclude part-time employees and students rejected - Allegations of voting day and membership irregularities dismissed - Board not ruling on the merits of the argument



that non-driving brokers should be declared one employer with the named respondents -  
Certificates issuing

AIRLINE LIMOUSINE SERVICES LIMITED, MCDONNELL-RONALD LIMOUSINE SERVICE LIMITED OPERATING AS; RE TEAMSTERS UNION, LOCAL 938; RE MCINTOSH LIMOUSINE SERVICE LIMITED; RE AIRLIFT LIMOUSINE SERVICES LIMITED; RE AIR CAB LIMOUSINE SERVICES (1985) LIMITED; RE AAROPORT LIMOUSINE SERVICES LTD. .... (May) 395

Certification - Bargaining Unit - Reconsideration - Union and employer requesting that Board amend the street address on the certificate to reflect a change in location - No employee raising an objection - No intervening collective agreement - Board agreeing to request in these narrow and unique circumstances

NATIONAL TRUST; RE UNION OF BANK EMPLOYEES (ONTARIO), LOCAL 2104, CANADIAN LABOUR CONGRESS; RE JANEEN G. SNARE ..... (Apr.) 369

Certification - Bargaining Unit - School Boards and Teachers Collective Negotiations Act - Whether supply instructors should be included in a unit of occasional teachers - Evolution in collective bargaining practice toward inclusion of supply instructors with occasional teachers in a single unit - Unit including both supply instructors and occasional teachers appropriate - Certificates issuing

MUSKOKA BOARD OF EDUCATION, THE; RE O.P.S.T.F.; RE O.S.S.T.F.; RE THE PEEL BOARD OF EDUCATION ..... (July) 775

Certification - Bargaining Unit - Union seeking to represent group of drivers owning neither car nor plate - Employer arguing unit of all dependent contractors more appropriate - Board affirming more than one unit may be appropriate - Unit proposed by union having distinct community of interest - "Pure driver" units recognized elsewhere and not causing serious bargaining problems or prejudice to public interest - Board accepting unit proposed by union

U-NEED-A-CAB LIMITED; RE R.W.D.S.U., AFL:CIO:CLC;; RE 751341 ONTARIO LTD. OPERATING AS M & M HOLDINGS, AND M & M AUTO CENTRE SOUTH END CAB INC. .... (Dec.) 1275

Certification - Charter of Rights and Freedoms - Constitutional Law - Judicial Review - Employees working under conditions akin to those in a factory - Employees responsible for monitoring the development of embryonic chickens - Employees found by Board to be persons employed in agriculture - Board holding that it has jurisdiction to entertain union's challenge that exclusion of persons employed in agriculture is contrary to the Charter - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law in finding itself to be a "court of competent jurisdiction" and in finding it has the authority to apply the Charter by virtue of s.52 of the *Constitution Act, 1982* - Judicial review dismissed by Divisional Court - Appeal dismissed by Court of Appeal.

CUDDY CHICKS LIMITED; RE ONTARIO LABOUR RELATIONS BOARD AND U.F.C.W., Local 175..... (Sept.) 989

Certification - Collective Agreement - Construction Industry - Interveners arguing that certain persons employed by the respondents were hired contrary to the collective agreement and therefore should not be in the unit for purposes of the count - Board not applying *April Waterproofing* principle - Interveners made no reasonable effort to make sure that the respondents had complied with the hiring provisions in the agreement

AERO BLOCK AND PRECAST LTD., KAMET ENTERPRISES LTD. AND 541190 ONTARIO INC.; RE C.J.A.; RE THE FORM WORK COUNCIL OF ONTARIO; RE L.I.U.N.A., LOCAL 493..... (Feb.) 93

Certification - Constitutional Law - Construction Industry - Respondent an engineering consulting company which provides vibration monitoring and assessment services - Bell Canada constructing a fibreoptic telecommunications cable - Respondent hired by construction company building cable to protect a nearby natural gas pipeline - Respondent's argument that since the work was in relation to a pipeline the application was outside provincial jurisdiction dismissed - Board finding this to be construction work and respondent's employees to be construction labourers

VIBRATION ASSESSMENT LIMITED; RE L.I.U.N.A., LOCAL 607 ..... (Feb.)

223

Certification - Constitutional Law - Judicial Review - Board determining that there is a category of employees of Ontario Hydro who are employed on or in connection with works which by section 17 of the *Atomic Energy Control Act* have been declared to be works for the general advantage of Canada - Ontario Hydro bringing application for judicial review for a declaration that the *Labour Relations Act* applies to its nuclear workers - Divisional Court quashing Board decision and declaring that the provincial Act applies to the nuclear employees of Ontario Hydro

ONTARIO HYDRO; RE ONTARIO LABOUR RELATIONS BOARD, THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES, C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000, THE COALITION TO STOP CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.S. STEVENSON, MICHELLE MORRISSEY-O'RYAN, GEORGE ORR ..... (June)

698

Certification - Construction Industry - Applicant seeking certification under construction industry provisions - Evidence showing only two employees in bargaining unit - Employees in question not performing construction industry work for majority of time on date of application - Majority of time test appropriate to assist in determining whether employee falls within a construction "craft" - Application dismissed

EDDIE BAUER, 162706 CANADA INC.; RE C.J.A., LOCAL 27 ..... (Oct.)

1041

Certification - Construction industry - Board construing statement in respondent's reply about its parking business to be claim respondent not engaged in construction industry - Board jurisdiction to certify under construction provisions dependent on employer operating business in construction industry - Board directing hearing into whether employer operating business in construction industry

MACDERO CONSTRUCTION LIMITED; RE L.I.U.N.A., LOCAL 183 ..... (Dec.)

1224

Certification - Construction Industry - Dependent Contractor - Employee - Carpentry contractor contracting with pieceworkers to perform carpentry work on low-rise residential housing - Pieceworkers may employ one or more "helpers" - Whether pieceworkers and helpers are employees of the carpentry contractor - Parties agreeing that a pieceworker with a single helper should be on the employee list - Board finding that helpers are the employees of the pieceworkers and not the carpentry contractor - Board determining that a pieceworker with more than one helper is an employer and independent contractor - In determining whether a pieceworker is an employer, the Board focuses on how many helpers a pieceworker

employs on the application date and not simply how many helpers are at work on the application date

E.M. CARPENTRY (1982) LIMITED; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27 (FORMERLY LOCAL 1190); RE WESTROYAL CARPENTRY LTD.; RE CAMO CONSTRUCTION; RE B. BEZEAU FRAMING; RE PIPAU CONSTRUCTION; RE JOEB CONSTRUCTION; RE LOPES CARPENTRY; RE OLIVEIRA CARPENTRY CONTRACTORS; RE BELMONTE CARPENTRY LTD.; RE LANDL CONSTRUCTION; RE CAYOUEITE FRAMER; RE ZEMARS CARPENTERS LTD.; RE DIVO CONSTRUCTION; RE P & F CARPENTRY; RE M. LANTEIGNE CONSTRUCTION .....(Aug.) 829

Certification - Construction Industry - Employer - Whether respondent is an employer in the construction industry - Respondent replacing metal plates and pipes in recovery and steam plant at a pulp and paper mill during its annual shutdown - Work found to be maintenance work not repair - Application converted to one under the general provisions of the Act - All employee unit found appropriate - Certificate issuing

LEVERT & ASSOCIATES CONTRACTING INC.; RE B.B.F ..... (June) 630

Certification - Construction Industry - Employer Support - Fraud - Reconsideration - Employee requesting Board reconsider its decision to certify the union - Allegations that union received employer support and certificate obtained by fraud - Cogent evidence pointing to possible violation of s.13 sufficient ground for reconsideration - Delay of 13 months in making reconsideration request is a factor in considering whether to vary or revoke the decision

WALLCRAFT PAINTING AND DECORATING LTD.; RE P.A.T., LOCAL 557(Mar.) 306

Certification - Construction Industry - Intimidation and Coercion - Membership Evidence - Unfair Labour Practice - Employer alleging that union threatened employees with closing down the job unless they signed cards - Improper comments which could arguably cause employees to be concerned about their continued employment made by rank-and-file employee as part of his "salesmanship" of the union not leading Board to question the voluntariness of the membership evidence filed - Misrepresentations made by union official immediately clarified by same official the next day - Membership evidence voluntary - Certificate issuing

COVELLO BROTHERS LIMITED; RE L.I.U.N.A., LOCAL 837; RE C.J.A., LOCAL 38..... (Feb.) 119

Certification - Construction Industry - Membership Evidence - Respondent requesting a hearing to "test" the membership evidence - Any party asserting any irregular or improper conduct is obliged to give notice and full particulars of its allegations - With the exception of particularized allegations of non-sign or non-pay the Board does not conduct investigations into allegations of impropriety with respect to the solicitation of membership evidence - Such allegations must be made, particularized and proven by a party to the proceeding - Board disposing of application without a hearing

LONCO CONSTRUCTION LIMITED, CARADON DEVELOPMENTS INC.; RE L.I.U.N.A., LOCAL 1059 .....(Mar.) 274

Certification - Construction Industry - Natural Justice - Practice and Procedure - Union filing certification application on terminal date of prior application by different union - First applicant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application

M. PICKARD CONSTRUCTION CO. LTD.; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES ..... (Oct.) 1046



- Certification - Construction Industry - Petition - Employees filing documents with the Board requesting a representation vote by secret ballot - Whether the "petitions" filed are evidence of objection by the employees to the certification and, if so, whether they are voluntary expressions of desire - Working foreman who circulated the petitions testifying that the petitions were drafted so that there would be a secret ballot vote - Board finding that the preamble was not a clear statement in opposition to the union - A request for a secret ballot vote is not tantamount to evidence of objection - Oral evidence supporting that conclusion - Documents not voluntary in any event - Certificates issuing
- ACTION ELECTRICAL LTD.; RE I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES ..... (Feb.) 79
- Certification - Construction Industry - Practice and Procedure - 4 2= days between receipt of documents from the Registrar and the terminal date is sufficient time to respond to application - Application disposed of without hearing - Objections to certification from employer dismissed - Certificates issuing
- B. MASKELL LIMITED; RE I.U.O.E., LOCAL 793 ..... (Apr.) 319
- Certification - Construction Industry - Practice and Procedure - Legislation not contemplating "interim certificate" requested by union - Board practice confined to issuing decision on appropriateness of certification on interim basis - Request denied
- P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES ..... (Oct.) 1053
- Certification - Construction Industry - Practice and Procedure - Pre-Hearing Vote - Unfair Labour Practice - Applicant union seeking to convert its certification application in which a pre-hearing vote had been requested to one in which no such vote is requested - Board denying request - Unfair labour practice complaint that employer transferred two employees out of bargaining unit to frustrate certification application - Complaint dismissed - Employees in question not permitted to vote - One ballot left to count - Ballot of single employee to be unsealed and counted unless objection received from party
- MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION (Sept.) 972
- Certification - Construction Industry - Practice and Procedure - Respondent employer requesting hearing in construction industry certification application - Board discussing membership evidence system in Ontario and certification procedure in the construction industry - Hearing denied - Certificates issuing
- WESTDALE PAINTING & DECORATING LTD.; RE P.A.T., LOCAL 205 ..... (Sept.) 984
- Certification - Construction Industry - Pre-Hearing Vote - Respondent failing to meet with officer to make voting arrangements or to file any lists of employees - Intervener arguing that the list should not be finalized in the absence of the respondent and the respondent's records - Board refusing to convene a hearing on the issue - Vote ordered on the basis of the records of the applicant and available information - Ballot box sealed
- VICTOR CARPENTRY LIMITED; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27 ..... (May) 524
- Certification - Construction Industry - Related Employer - Labourers Union seeking in its certification application to have the respondent companies declared one employer - Bricklayers Union intervening in certification and filing its own related employer application - Whether Board will exercise its discretion to declare respondents one employer - Board dismissing Bricklayers' application because union did not act promptly but making one employer dec-

laration in the Labourers application - Certification application scheduled for further hearing

GOTTCO CONTRACTORS LIMITED, GOTTARDO PROPERTIES (DOME) INC., GOTTARDO PROPERTIES LIMITED, GOTTARDO CONTRACTING (1980) INC., GOTTARDO CONTRACTING CO. LIMITED, GOTTARDO HOLDINGS COMPANY LTD., GOTTARDO MANAGEMENT LIMITED AND GOTTARDO CORPORATION; RE L.I.U.N.A., LOCAL 506; RE B.M.I.U., LOCAL 1 ..... (July)

757

Certification - Employee - Evidence - Practice and Procedure - Witness - Board direction to file and exchange documents on which parties intend to rely - Respondent employer concerned that it could not approach employees who may be summonsed for examination in order to obtain information and documents - No property in a witness - Proper for a party to communicate with any examinee before he or she begins testifying if it is for the purpose of obtaining information relevant to the proceedings

ONTARIO HYDRO; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES; RE C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000; RE THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.A. STEVENSON, AND MICHELLE MORRISSEY-O'RYAN AND GEORGE ORR ON BEHALF OF CERTAIN OBJECTING EMPLOYEES..... (Sept.)

983

Certification - Evidence - Membership Evidence - Nature of inquiries made by Form 9 Declarant were such that the Form 9 was unsatisfactory - Declaration cannot be based on the assumption that a collector has carried out prior instructions or on an examination of the membership cards - Recall of collector as witness to establish that each applicant for membership had personally paid a dollar not permitted - Application dismissed

ESTONIAN RELIEF COMMITTEE IN CANADA; RE S.E.I.U., LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C.; RE GROUP OF EMPLOYEES ..... (May)

440

Certification - Evidence - Petition - Board discussing the effect of an earlier petition on the voluntariness of a later petition - Circumstances surrounding the prior circulation of a petition are relevant to the voluntariness of a subsequent document but the voluntariness of the signatures on the earlier document is not a relevant question - Petition found voluntary - Vote ordered

FRAM CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (Feb.)

133

Certification - Evidence - Practice and Procedure - Related Employer - Board determining procedure for dealing with certification and related employer applications involving ten respondents - Respondent arguing that Board is without jurisdiction to adjudicate the related employer application until it has determined the applicant's right to be certified for any or all respondents - Respondents argument that it is a prerequisite to a s.1(4) declaration that there exist some bargaining rights dismissed - Board determining that related employer application should be dealt with first - Applicant's request that certain documents be produced in advance of hearing granted - Board also encouraging parties to voluntarily produce in advance documents on which they intend to rely

ATWAY TRANSPORT INC.; RE I.W.A.; RE TAIGA TRUCKING (ONTARIO) 1980 INC.; RE MENROY TRUCKING INC.; RE DEMERS & DARGY TRANSPORT INC.; RE GOSSELIN TRUCKING; RE PAUL GAGNON TRUCKING; RE J. BERNARD TRUCKING; RE CONTRACTORS CLEANUP SERVICES LIMITED; RE L.I.U.N.A., LOCAL 706; RE KOPKA TRANSPORT INC.; RE PARAMOUNT TRANSPORTATION LIMITED ..... (Feb.)

101

Certification - Interference in Trade Unions - Intimidation and Coercion - Pre-Hearing Vote -

Applicant union claiming that pamphlets and cartoons distributed to employees by the incumbent union at the "11th" hour was so misleading as to warrant a second vote - Board reluctant to interfere in union election campaigns - Applicant union called no evidence indicating that the statements were false - Reasonable employees would see the material as propaganda in any event - No reason to believe the material would impair the employees' freedom to vote as they considered appropriate - Vote ordered counted

TRIDON LIMITED; RE C.A.W.; RE TRIDON EMPLOYEES' UNION.....(Mar.)

295

Certification - Intimidation and Coercion - Unfair Labour Practice - Reference to two-tiered union dues made by ordinary employee soliciting union membership - Reasonable employee not likely to be influenced by statements of fellow employee lacking power over union dues and engaged in partisan salesmanship - Employees having opportunity to seek clarification - Inaccurate statements in literature distributed by employer and union mere partisan salesmanship - Board refusing to discount membership evidence and certifying union

VENTURE INDUSTRIES CANADA LTD.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (Oct.)

1074

Certification - Membership Evidence - Board inquiring into the reliability of the Form 9 - Place of Form 9 in certification proceedings reviewed - Board satisfied with the reliability of the Form 9 - Ballots counted - Application dismissed

CUDDY FOOD PRODUCTS, CUDDY FOOD PRODUCTS LTD. AND CUDDY INTERNATIONAL CORPORATION C.O.B. AS A PARTNERSHIP IN THE NAME OF; RE R.W.D.S.U., AFL:CIO:CLC.; RE U.F.C.W., LOCAL 175, AFL-CIO-CLC ..... (June)

583

Certification - Membership Evidence - Practice and Procedure - Respondent asking Board to appoint an officer to inquire into the voluntariness of the membership evidence or order a vote because the employees do not know English - Respondent not making any allegations of wrongdoing nor asserting that any particular individual did not know what he was signing - None of the employees coming forward to oppose application - Board issuing a certificate without officer appointment or vote

ADMIRAL LINEN SUPPLY LIMITED; RE TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES, INTERNATIONAL UNION, LOCAL 351 ..... (Feb.)

90

Certification - Membership Evidence - Pre-Hearing Vote - One membership card submitted by applicant bearing no indication of the amount paid in respect of initiation fees or dues by the worker - Omission raising question about the reliability of the Form 9 declaration - Matter to be addressed at a hearing after the vote is conducted

SMITHS FALLS COMMUNITY HOSPITAL - NORTH UNIT, THE; RE INDEPENDENT CANADIAN TRANSIT UNION; RE C.U.P.E. AND GENERAL WORKERS; RE THE SMITHS FALLS COMMUNITY HOSPITAL - SOUTH UNIT ..... (Jan.)

64

Certification - Membership Evidence - Union withdrawing certification application following non-pay allegation made by employer - Union re-filing with fresh membership evidence - Employer arguing that membership evidence remained under a "cloud" and should be rejected by the Board - Board not exercising its discretion to either dismiss application or order a vote - Certificate issuing

FLO-CON CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (July)

752

Certification - Natural Justice - Practice and Procedure - Security Guard - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice



questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem

MCLEAN SECURITY, 445733 ONTARIO LTD. C.O.B. AS; RE U.S.W.A. .... (Oct.) 1048

Certification - Natural Justice - Practice and Procedure - Union and employer agreeing on expanded bargaining unit to include group specifically excluded in posted notice to employees - Natural justice requiring notice to all persons possibly affected by certification - Posted notice of certification application of itself insufficient notice to group specifically excluded from unit description - Board ordering reposting with expanded bargaining unit description and extending terminal date

TRANS CONTINENTAL PRINTING INC.; RE TEAMSTERS' UNION, LOCAL 91;  
RE GROUP OF EMPLOYEES ..... (Nov.) 1187

Certification - Petition - Board reviewing system of certification in Ontario - Following petition inquiry Board finding that first seven signatures on petition were voluntary but not the rest - Remainder of signatures were obtained following a meeting with senior management where it was indicated that joining the union would put jobs at risk - Number of voluntary signatures not diminishing the support for certification to the point where the Board would order a vote - Certificate issuing

BRIAN CHEVROLET OLDSMOBILE LTD.; RE C.A.W.; RE GROUP OF  
EMPLOYEES ..... (Apr.) 324

Certification - Petition - Practice and Procedure - Reconsideration - Timeliness - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely *prima facie* evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982)  
LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION  
COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP  
OF EMPLOYEES ..... (Oct.) 1053

Certification - Practice and Procedure - Ballot box ordered sealed following submissions from the union that it had not received notice of the hearing where the voluntariness of the petition had been determined - Staff of union on strike and picket line in place when notice of hearing left at union office - Union official not discovering notice until after the hearing - Board declining to reconvene hearing on the issue of the voluntariness of the petition - Failure to read the notice until after the hearing not beyond the control of the union - Board ordering ballots counted

WOODSTOCK & DISTRICT ASSOCIATION FOR THE MENTALLY RETARDED;  
RE LONDON AND DISTRICT SERVICE WORKERS' UNION, LOCAL 220,  
S.E.I.U., A.F.L., C.I.O., C.L.C.; RE GROUP OF EMPLOYEES ..... (Feb.) 227

Certification - Practice and Procedure - Employees on Schedule C of employee lists not at work within the 30 day period prior to the application date - Earlier application where these employees would have been included in the unit withdrawn - Employer arguing that the 30-30 rule should not be applied because the union was gerrymandering by picking an application date more than 30 days after the lay offs - No reason to decline to apply the 30-30 rule - Employees on Schedule C excluded from the lists

FLO-CON CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (June) 594

Certification - Practice and Procedure - Pre-Hearing Vote - Parties developing an alternative dispute resolution procedure to deal with 650 list challenges - Procedure submitted to the Board for its approval - Board approving of appointment of Vice-Chair under s.103(2)(h)

to hear evidence and report back to the panel which will then make decisions based on the report - Rulings made by Vice-Chair are deemed to be the parties' settlements - Vice-Chair intended to be a dispute settling mechanism of "last resort"

TORONTO, GOVERNING COUNCIL OF THE UNIVERSITY OF; RE C.U.P.E.; RE GROUP OF EMPLOYEES .....	(May)	521
Certification - Practice and Procedure - Pre-Hearing Vote - Pre-hearing vote conducted and ballot box sealed - Applicant seeking leave to withdraw prior to ballots being counted - Whether a bar should be imposed on further applications by the applicant - Board making distinction between a dismissal that results from the union losing the vote and a dismissal that results from the union not having sufficient membership evidence entitling it to a vote - No bar imposed		
AMARCORD CARPENTERS LTD.; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27 (FORMERLY LOCAL 1190) .....	(June)	531
Certification - Practice and Procedure - Pre-Hearing Vote - Representation Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot		
MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION. (Oct.)		1050
Certification - Practice and Procedure - Pre-Hearing Vote - Representation Vote - Sole voter requesting Board not count ballot - Board already ordering counting of ballot in previous decision - Eligible voters aware of possibility of single vote beforehand in every case - Not open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation against person participating in proceeding - Board to respond quickly to allegations of retaliation		
MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION. (Nov.)		1112
Certification - Practice and Procedure - Pre-Hearing Vote - Request by applicant for a pre-hearing representation vote - Board aware of a prior outstanding certification application by the applicant with respect to some or all of the same employees of the respondent - A request to withdraw the previous application had not yet been dealt with because of the issue of the imposition of a bar - Whether Board should appoint an officer to make voting arrangements - Decision to delay processing the application would be inconsistent with the Board's approach to pre-hearing vote applications - Officer appointed		
U-NEED-A CAB LIMITED; RE R.W.D.S.U., AFL-CIO:CLC: .....	(Mar.)	301
Certification - Practice and Procedure - Pre-Hearing Vote - Respondent refusing to post notices for employees and to provide requisite lists of employees - Respondent taking position that the application was untimely by reason of the alleged existence of a collective agreement - Persons interfering with Board instructions may be liable to punishment for contempt - Officer directed to meet with parties		
GOLDCREST FURNITURE LTD.; RE U.S.W.A.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE TEAMSTERS UNION; RE GROUP OF EMPLOYEES .....	(Mar.)	245
Certification - Practice and Procedure - Pre-Hearing Vote - Trade Union Status - Applicant for certification is expected to correctly name itself - Statements of applicant's affiliations do not belong in the title portion of the certification application - Benefit of s.105 is unavailable to the applicant unless it can show that it is a continuation of one of the organizations		

previously found by the Board to be a trade union - Ballot box sealed - Applicant will be required to show it is a trade union

BUTCHER ENGINEERING ENTERPRISES LIMITED, THE; RE TEAMSTERS, LOCAL UNION NO. 880 ..... (Feb.) 109

Certification - Practice and Procedure - Timeliness - Objectors requesting an extension of the terminal date - Board does not extend the terminal date lightly - Three full days was sufficient notice to allow employees to object to the certification - Certificate issuing

CAREY'S RESTAURANTS (DUNDAS) INC.; RE H.E.R.E, LOCAL 75; RE GROUP OF EMPLOYEES ..... (Mar.) 233

Certification - Practice and Procedure - Trade Union Status - Applicant notified that it had not been found to be a trade union under the name in which it had applied - Applicant requesting that its name on the application be amended - Board satisfied that applicant had made a *bona fide* mistake - Amendment permitted - No hearing necessary - Vote ordered

BLUE BELL CANADA INCORPORATED; RE A.C.T.W.U.; RE GROUP OF EMPLOYEES ..... (May) 412

Certification - Practice and Procedure - Trade Union Status - Respondent alleging that applicant had not proven its trade union status - Applicant arguing it was the same organization that had previously been found to be a trade union - Where any deviation in applicant's name from name Board has in its files a hearing will result - In order to benefit from presumption in s.105 an applicant must style itself in exactly the same fashion as the organization which has already been granted "status" - Board satisfied after hearing evidence that applicant could benefit from previous trade union determination - Argument that employees would be misled as to who was the true applicant dismissed

HUMPTY DUMPTY FOODS LIMITED; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647; RE THE RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS' UNION, LOCAL 461 OF THE R.W.D.S.U., AFL:CIO:CLC: ..... (Feb.) 147

Certification - Pre-Hearing Vote - School Boards and Teachers Collective Negotiations Act - *Ottawa-Carleton French-Language School Board Act, 1988* setting up a distinct school board for French-language education in the Ottawa area - Applicant applying to be certified for occasional teachers and part-time supply instructors employed by the respondent - Respondent arguing that it is not the employer - Board examining scheme of Act - Pre-hearing vote ordered - Outstanding issues to be addressed at hearing following vote

CONSEIL SCOLAIRE DE LANGUE FRANCAISE  
AISE D'OTTAWA-CARLETON (SECTION CATHOLIQUE); RE ASSOCIATION DES ENSEIGNANTES ET DES ENSEIGNANTS SUPPLEMENTAIRE D'OTTAWA-CARLETON SUPPLEMENTAIRE SEPARATE ..... (June) 575

Certification - Pre-Hearing Vote - Timeliness - Respondent and intervener arguing that pre-hearing vote should not be ordered because the application was untimely - Applicant asking that Board set aside earlier decision giving consent to early termination of collective agreement due to lack of notice to employees and fraud - Collective agreement would not bar application if Board retroactively revokes its consent to the early termination - Vote ordered - Ballot box sealed

GOLDCREST FURNITURE LTD.; RE U.S.W.A.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE TEAMSTERS UNION; RE GROUP OF EMPLOYEES ..... (Apr.) 355

Certification - Pre-Hearing Vote - Trade Union - Trade Union Status - Whether application barred due to six month bar in place against another local of the same union - Pre-hearing



vote ordered but ballot box sealed - Issue of trade union status of applicant to be dealt with at the hearing to be scheduled to hear the merits of entertaining the application

GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS UNION, LOCAL 938; RE THE ASSOCIATION OF MUNICIPAL EMPLOYEES (Apr.)

352

Certification - Representation Vote - Complaint that a large number of employees did not understand the Notice of Taking of Vote because of language difficulties dismissed - Fact that sample ballot defaced prior to vote not leading Board to direct new vote - Electioneering by union in the form of statements and objects marked with the union logo not coercive - None of the allegations were raised until after the vote had been counted - No reason to direct new vote - Certificate issuing

NORTHFIELD METAL PRODUCTS LTD.; RE G.M.P. (A.F.L.-C.I.O., C.L.C.); RE GROUP OF EMPLOYEES .....(Jan.)

57

Certification - Representation Vote - Objectors requesting that results of representation vote be set aside and a new vote conducted due to union electioneering and intimidating conduct - Electioneering conducted by both union and objectors - No intimidation of voters by union in polling area - Conduct complained of not affecting secrecy of vote - Board not setting vote aside

ALLIED SIGNAL AUTOMOTIVE OF CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES .....(Sept.)

927

Certification - Trade Union - Trade Union Status - Applicant so named had not been found to be a trade union in any previous proceeding - Applicant leading evidence at hearing to show that it was the same organization which had been found to be a trade union in another proceeding - Applicants for certification cautioned to consistently use the same name - Jurisprudence on issue reviewed

BUTCHER ENGINEERING ENTERPRISES LIMITED, THE; RE TEAMSTERS UNION, LOCAL 880 .....(Apr.)

332

Certification - Trade Union - Trade Union Status - Applicant's membership cards in English and French - Neither English nor French name that under which the applicant made this application - Board discussing the effect of s.105 of the Act - Applicant adducing documentary and oral evidence to show that it was the organization which had been found to be a trade union in an earlier proceeding - Applicant found to be a trade union

GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS UNION, LOCAL 91; RE ASSOCIATION OF MUNICIPAL EMPLOYEES; RE C.U.P.E. ....(Mar.)

241

Certification - Trade Union - Trade Union Status - Whether applicant entitled to the benefit of the presumption of trade union status in s.105 - Board is concerned with differences of substance between a "label" which has been found to identify a union and the label used by the applicant for certification - Board will not concern itself with minor mistakes in the naming of an applicant for certification - Applicant entitled to benefit of presumption in s.105 - Certificates issuing

PIONEER MECHANICAL LIMITED; RE U.A., LOCAL 46.....(Mar.)

277

Certification - Trade Union - Whether six month bar imposed against a sister local following an unsuccessful vote should operate as against the applicant local union - No evidence that applicant was the alter ego to the sister local or that it was applying in name only - Bar not operating as against the applicant

GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS UNION, LOCAL 938; RE THE ASSOCIATION OF MUNICIPAL EMPLOYEES (Aug.)

846

Certification - Trade Union Status - Employer recognizing the applicant as the representative body for a group of employees for a number of years - Whether the applicant is a trade union - Whether employer support so as to prohibit Board from certifying applicant - Board rejecting proposition that an organization which includes managerial persons in its membership cannot be a trade union - Not critical that an applicant establish a technically satisfactory constitutional continuum if it has been in existence a long time - Board discussing ways a trade union may be brought into existence - Applicant found to be a trade union - Certification of applicant not prohibited by s.13

ONTARIO HYDRO; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES; RE C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000; RE THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.A. STEVENSON, AND MICHELLE MORRISSEY-O'RYAN AND GEORGE ORR ON BEHALF OF CERTAIN OBJECTING EMPLOYEES..... (Feb.)

185

Certification Where Act Contravened - Change in Working Conditions - Interference in Trade Unions - Unfair Labour Practice - Union alleging that employer failed to give its usual annual wage increase during the freeze - Reasonable expectations of employees contain an objective element - No breach of freeze - No interference with trade union - Ballots cast in representation vote ordered counted

COCA-COLA LTD.; RE U.F.C.W.; RE GROUP OF EMPLOYEES..... (May)

427

Certification Where Act Contravened - Charter of Rights and Freedoms - Judicial Review - Unfair Labour Practice - Board determining that lay off of workers constituting unfair labour practice - Union certified pursuant to s.8 - Reverse onus not contrary to Charter - Employer and employees bringing applications for judicial review on the grounds that, *inter alia*, the Board misled the employees as to the evidence to be adduced and failed to find the reverse onus provision to be contrary to the Charter - Judicial reviews dismissed by Divisional Court

KNOB HILL FARMS LIMITED, THE ONTARIO LABOUR RELATIONS BOARD AND U.F.C.W., LOCAL 206 AND; RE DONNA BAYDAK ON BEHALF OF A GROUP OF 156 EMPLOYEES ..... (June)

697

Certification Where Act Contravened - Discharge for Union Activity - Interference in Trade Unions - Unfair Labour Practice - Employer breaching Act by asking employees who had joined the union - Statements made at captive audience meeting breach of Act - Employer not meeting onus of demonstrating that it did not lay off employees because of the organizing campaign - Names of employees who were laid off contrary to the Act included on the list of employees - Certificates issuing - Unnecessary to determine s.8

RAINSOON METAL SYSTEMS INCORPORATED; RE S.M.W., LOCAL 30. (May)

482

Certification Where Act Contravened - Evidence - Membership Evidence - Unfair Labour Practice - Evidence of witness who was not subject to full cross-examination admissible - Surprisingly made tape-recording of a "captive" audience meeting of employees convened by an employer admissible in unfair labour practice complaint - Viva voce evidence permitted on membership cards missing dates - Threats and questioning of employees concerning the union breach of Act - Statements made at "captive" audience meeting breach of Act - Follow-up meeting not curing breaches - Discharge of employee after the union filed an unfair labour practice complaint on his behalf breach of Act - Union certified pursuant to s.8

ROYCE DUPONT POULTRY PACKERS; RE U.F.C.W., LOCAL 175, AFL-CIO-CLC; RE GROUP OF EMPLOYEES ..... (May)

492

Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion

- Remedies - Interference in trade union found where employer questioned employees about union support, prohibited and punished union solicitation on company property, shut down plant to permit meetings of union opposition, transferred union supporters from regular jobs, posted foremen at hotel where union meeting taking place - Interference and intimidation found where employer monitored union leafletting at plant gate - Certification inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment files for solicitation, and provision to trade union of updated list of employees names and addresses

ONTARIO BUS INDUSTRIES INC.; RE C.A.W.; RE GROUP OF EMPLOYEES.....(Nov.)	1115
--	------

Change in Working Conditions - Certification Where Act Contravened - Interference in Trade Unions - Unfair Labour Practice - Union alleging that employer failed to give its usual annual wage increase during the freeze - Reasonable expectations of employees contain an objective element - No breach of freeze - No interference with trade union - Ballots cast in representation vote ordered counted

COCA-COLA LTD.; RE U.F.C.W.; RE GROUP OF EMPLOYEES..... (May)	427
---	-----

Change in Working Conditions - Discharge - Evidence - Interference in Trade Unions - Practice and Procedure - Remedies - Unfair Labour Practice - Board taking into account findings of fact made by another panel with respect to issues put squarely before that panel in another proceeding involving the same parties - Respondent employer not appearing at hearing and therefore failing to discharge burden of proof - Multiple breaches of Act - Respondent not providing conduct money to witnesses it had summonsed and who had attended - Employer's actions may constitute unfair labour practice but Board has other means of enforcing the payment of conduct money - Board ordering that conduct money be paid and posting - Board declining to award costs

HAMILTON AUTOMATIC VENDING COMPANY LIMITED; RE CEMENT, LIME, GYPSUM AND ALLIED WORKERS DIVISION OF THE B.B.F. AND ITS LOCAL 576.....(Mar.)	248
--	-----

Charter of Rights - Judicial Review - Interference in Trade Unions - Mall owner appealing Divisional Court decision (reported at (1988) 62 O.R. 2d 337) upholding Board decision (reported as T. Eaton Company Limited, [1985] OLRB Rep. June 941) - Board found mall owner to have committed unfair labour practice by acting on behalf of employer to enforce no solicitation policy without reasonable business justification - Mall owner arguing Board exceeded jurisdiction by infringing on property rights and by finding mall owner acted on behalf of employer - Board acting within statutory authority and not exercising powers in patently unreasonable manner - Appeal dismissed

CADILLAC FAIRVIEW CORPORATION LIMITED AND T.E.C. LEASHOLDS LIMITED; RE R.W.D.S.U., AFL-CIO-CLC, T. EATON COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD .....(Dec.)	1292
---	------

Charter of Rights and Freedoms - Adjournment - Certification - Issue in certification cases involving the effect of the Charter on the security guard provision in the Act - Whether Charter issue should be postponed pending the release of the final decision in *Cuddy*



*Chicks* concerning the Board’s jurisdiction to deal with Charter issues - Adjournment denied - Labour relations considerations favouring expedition

PINKERTON’S OF CANADA LTD.; RE C.G.A.; RE RICHARD BIBEAULT; RE NATIONAL PROTECTIVE SERVICES COMPANY LIMITED; RE GOERGE FAULKENBURG; RE BOARD OF MANAGEMENT FOR THE METROPOLITAN TORONTO ZOO; RE INTERNATIONAL UNION UNITED PLANT GUARDS, LOCAL 1962; RE RON SAXTON; RE BURNS INTERNATIONAL SECURITY SERVICES LIMITED; RE GORDON A. SOUTHRN; RE WACKENHUT OF CANADA LIMITED; RE SHANE FREEMAN; RE U.S.W.A; RE LARRY BISHOP..... (July)

783

Charter of Rights and Freedoms - Adjournment - Certification - Judicial Review - Stay - Issue in certification cases involving the effect of the Charter on the security guard provision in the Act - Whether Charter issue should be postponed pending the release of the final decision in *Cuddy Chicks* concerning the Board’s jurisdiction to deal with Charter issues - Adjournment denied - Labour relations considerations favouring expedition - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board exceeded its jurisdiction in attempting to hear a Charter challenge and failed to observe the principles of natural justice by forcing the parties to submit to a procedure that would not afford them an opportunity to know the case they had to meet - Judicial review dismissed by Divisional Court

PINKERTON’S OF CANADA LTD.; RE O.L.R.B., RICHARD BIBEAULT, C.G.A., NATIONAL PROTECTIVE SERVICES COMPANY LIMITED, THE BOARD OF MANAGEMENT FOR THE METROPOLITAN TORONTO ZOO, BURNS INTERNATIONAL SECURITY SERVICES LIMITED, GORDON A. SOUTHRN, WACKENHUT OF CANADA LIMITED, SHANE FREEMAN, U.S.W.A., LARRY BISHOP, INCO LIMITED, INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA..... (Aug.)

924

Charter of Rights and Freedoms - Certification - Constitutional Law - Judicial Review - Employees working under conditions akin to those in a factory - Employees responsible for monitoring the development of embryonic chickens - Employees found by Board to be persons employed in agriculture - Board holding that it has jurisdiction to entertain union’s challenge that exclusion of persons employed in agriculture is contrary to the Charter - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law in finding itself to be a “court of competent jurisdiction” and in finding it has the authority to apply the Charter by virtue of s.52 of the *Constitution Act, 1982* - Judicial review dismissed by Divisional Court - Appeal dismissed by Court of Appeal.

CUDDY CHICKS LIMITED; RE ONTARIO LABOUR RELATIONS BOARD AND U.F.C.W., Local 175..... (Sept.)

989

Charter of Rights and Freedoms - Certification Where Act Contravened - Judicial Review - Unfair Labour Practice - Board determining that lay off of workers constituting unfair labour practice - Union certified pursuant to s.8 - Reverse onus not contrary to Charter - Employer and employees bringing applications for judicial review on the grounds that, *inter alia*, the Board misled the employees as to the evidence to be adduced and failed to find the reverse onus provision to be contrary to the Charter - Judicial reviews dismissed by Divisional Court

KNOB HILL FARMS LIMITED, THE ONTARIO LABOUR RELATIONS BOARD AND U.F.C.W., LOCAL 206 AND; RE DONNA BAYDAK ON BEHALF OF A GROUP OF 156 EMPLOYEES ..... (June)

697

Charter of Rights and Freedoms - Health and Safety - Judicial Review - Youth services officer at secured custody facility refusing to work at another location at the facility because of his belief that he would be putting his co-workers in danger - Officer completing shift at his

regular location and receiving reprimand letters - OHSA providing that such persons do not have the right to refuse work which would endanger their or co-workers' safety - Board dismissing complaint - Worker cannot refuse work on the basis that some other provision in the Act creates a right to disobey the employer - Officer's actions constituting insubordination - Board not exercising discretion to substitute a different penalty - Officer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law and exceeded its jurisdiction in its interpretation of the OHSA and the provision in the OHSA by which he was excluded from the right to refuse unsafe work was contrary to s.15, the equality provision, of the Canadian Charter of Rights and Freedoms - Judicial review dismissed by Divisional Court

MINISTRY OF COMMUNITY AND SOCIAL SERVICES, THE CROWN IN RIGHT OF ONTARIO AND ONTARIO LABOUR RELATIONS BOARD; RE DOUGLAS LLOYD ..... (Mar.)

316

Charter of Rights and Freedoms - Health and Safety - Judicial Review - Youth services officer at secured custody facility refusing to work at another location at the facility because of his belief that he would be putting his co-workers in danger - Officer completing shift at his regular location and receiving reprimand letters - OHSA providing that such persons do not have the right to refuse work which would endanger co-workers' safety - Board dismissing complaint - Worker cannot refuse work on the basis that some other provision in the Act creates a right to disobey the employer - Officer's actions constituting insubordination - Board not exercising discretion to substitute a different penalty - Officer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law and exceeded its jurisdiction in its interpretation of the OHSA and that the provision in the OHSA by which he was excluded from the right to refuse unsafe work was contrary to s.15, the equality provision, of the Canadian Charter of Rights and Freedoms - Judicial review dismissed by Divisional Court - Application by officer for leave to appeal to the Court of Appeal dismissed

MINISTRY OF COMMUNITY AND SOCIAL SERVICES, THE CROWN IN RIGHT OF ONTARIO AND ONTARIO LABOUR RELATIONS BOARD; RE DOUGLAS LLOYD ..... (June)

698

Collective Agreement - Bargaining Unit - Employee - Evidence - Termination - Union arguing that bargaining unit included a large number of temporary agency workers - Collective agreement describing "all employee" unit - Agency workers not included on list at certification - Union never seeking to represent agency workers until termination application filed - Board determining that agency workers should not be treated as employees "in the unit" for purposes of the termination application - Relisted for hearing on issue of voluntariness of petition

WESTBURNE INDUSTRIAL ENTERPRISES LTD., NEDCO, DIVISION OF; RE TISH VASSAIR; RE TEAMSTERS UNION, LOCAL 419 ..... (June)

658

Collective Agreement - Certification - Construction Industry - Interveners arguing that certain persons employed by the respondents were hired contrary to the collective agreement and therefore should not be in the unit for purposes of the count - Board not applying *April Waterproofing* principle - Interveners made no reasonable effort to make sure that the respondents had complied with the hiring provisions in the agreement

AERO BLOCK AND PRECAST LTD., KAMET ENTERPRISES LTD. AND 541190 ONTARIO INC.; RE C.J.A.; RE THE FORM WORK COUNCIL OF ONTARIO; RE L.I.U.N.A., LOCAL 493 ..... (Feb.)

93

Collective Agreement - Construction Industry - Construction Industry Grievance - Employer - Grievance alleging that Metro breached the collective agreement by contracting for the performance of electrical work with a contractor who was not a party to a collective agreement

with the IBEW - Respondent Metro arguing it was not an “employer” in the construction industry but an owner and therefore not bound by the collective agreement - Board rejecting proposition that it is bound to consider whether the respondent to a reference to arbitration was acting as a person operating a business in the construction industry in respect of the subject matter of the grievance - Only issue is whether respondent’s activities have violated the provincial agreement - Metro did not “sublet” work because it did not award a secondary contract - Grievance dismissed

TORONTO, THE MUNICIPALITY OF METROPOLITAN; RE I.B.E.W., LOCAL 353; RE THE ELECTRICAL TRADE BARGAINING AGENCY OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO .....(Mar.)

279

Collective Agreement - Construction Industry - Construction Industry Grievance - Union local claiming voluntary recognition from Working Agreement signed by Council ten years prior to local’s existence - Council unable to be agent of non-existent principal - Agreement not binding employer and union local - Grievance referral dismissed

EASTERN CONSTRUCTION COMPANY LIMITED; RE THE OPERATIVE PLASTERERS’ AND CEMENT MASONS’ INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172 RESTORATION STEEPLE-JACKS.....(Nov.)

1105

Collective Agreement - Construction Industry - Employer - Judicial Review - Board finding Windsor Board of Education to be an employer in the construction industry - Employer relying on “gentleman’s agreement” as constituting a bar to the union’s contracting out grievance - Board declaring “gentleman’s agreement” null and void as it applies to the ICI sector - Union not estopped from enforcing the ICI agreement - Board finding that ICI agreement breached - Windsor Board of Education bringing application for judicial review on the grounds that, *inter alia*, the Board declined jurisdiction when it refused to apply the doctrine of promissory estoppel and the Board erred in determining that the Windsor Board of Education was acting as an “employer” in these circumstances - Judicial review dismissed by Divisional Court

WINDSOR, THE BOARD OF EDUCATION FOR THE CITY OF; RE U.A., LOCAL 552 AND ONTARIO LABOUR RELATIONS BOARD..... (Feb.)

231

Collective Agreement - Construction Industry - Employer - Judicial Review - Board finding Windsor Board of Education to be an employer in the construction industry - Employer relying on “gentleman’s agreement” as constituting a bar to the union’s contracting out grievance - Board declaring “gentleman’s agreement” null and void as it applies to the ICI sector - Union not estopped from enforcing the ICI agreement - Board finding that ICI agreement breached - Windsor Board of Education bringing application for judicial review on the grounds that, *inter alia*, the Board declined jurisdiction when it refused to apply the doctrine of promissory estoppel and the Board erred in determining that the Windsor Board of Education was acting as an “employer” in these circumstances - Judicial review dismissed by Divisional Court - Application by Windsor Board of Education for leave to appeal to the Court of Appeal dismissed

WINDSOR, BOARD OF EDUCATION FOR THE CITY OF; RE U.A., LOCAL 552 AND ONTARIO LABOUR RELATIONS BOARD ..... (June)

707

Collective Agreement - Duty to Bargain in Good Faith - Unfair Labour Practice - Collective agreement containing COLA clause negotiated - Employer believing COLA clause was suspended for the life of the agreement - Employer alleging that union breached its bargaining duty by not informing the employer of its mistaken belief - Union not obliged to question the employer’s thinking when it makes a monetary offer - Complaint dismissed

NIAGARA BRONZE LIMITED; RE G.M.P. AND JACK ERSKINE, ET AL .....(Aug.)

857



Collective Agreement - Strike - "No board" report issuing for two bargaining units on same day - Both units striking - Second unit having "bridge clause" in agreement providing for continuation until thirty days after effective date of new agreement with first unit - Employer seeking unlawful strike declaration for second unit - Act providing bridge provisions terminable on thirty days notice - Written notice not required - Actual notice given by union - Application dismissed

CATERPILLAR OF CANADA LTD.; RE C.A.W. AND ITS LOCAL 252, TED MURPHY AND MEMBERS OF THE RESPONDENT LOCAL TRADE UNION EMPLOYED AS SALARIED EMPLOYEES BY CATERPILLAR OF CANADA LTD. .... (Nov.)

1099

Conciliation - Practice and Procedure - Reference - Trade Union - Trade Union Status - Union Successor Status - Objecting employees permitted to participate in Ministerial reference - Two union locals taking steps to merge - Whether "predecessor" local still in existence so as to be entitled to request a conciliation officer - Board discussing trade union reorganizations - Board finding that union local still existed as a trade union at the time it requested a conciliation officer

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Feb.)

149

Constitutional Law - Certification - Charter of Rights and Freedoms - Judicial Review - Employees working under conditions akin to those in a factory - Employees responsible for monitoring the development of embryonic chickens - Employees found by Board to be persons employed in agriculture - Board holding that it has jurisdiction to entertain union's challenge that exclusion of persons employed in agriculture is contrary to the Charter - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law in finding itself to be a "court of competent jurisdiction" and in finding it has the authority to apply the Charter by virtue of s.52 of the *Constitution Act, 1982* - Judicial review dismissed by Divisional Court - Appeal dismissed by Court of Appeal.

CUDDY CHICKS LIMITED; RE ONTARIO LABOUR RELATIONS BOARD AND U.F.C.W., Local 175..... (Sept.)

989

Constitutional Law - Certification - Construction Industry - Respondent an engineering consulting company which provides vibration monitoring and assessment services - Bell Canada constructing a fiberoptic telecommunications cable - Respondent hired by construction company building cable to protect a nearby natural gas pipeline - Respondent's argument that since the work was in relation to a pipeline the application was outside provincial jurisdiction dismissed - Board finding this to be construction work and respondent's employees to be construction labourers

VIBRATION ASSESSMENT LIMITED; RE L.I.U.N.A., LOCAL 607 ..... (Feb.)

223

Constitutional Law - Certification - Judicial Review - Board determining that there is a category of employees of Ontario Hydro who are employed on or in connection with works which by section 17 of the *Atomic Energy Control Act* have been declared to be works for the general advantage of Canada - Ontario Hydro bringing application for judicial review for a declaration that the *Labour Relations Act* applies to its nuclear workers - Divisional Court quashing Board decision and declaring that the provincial Act applies to the nuclear employees of Ontario Hydro

ONTARIO HYDRO; RE ONTARIO LABOUR RELATIONS BOARD, THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES, C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000, THE COALITION TO STOP CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.S. STEVENSON, MICHELLE MORRISSEY-O'RYAN, GEORGE ORR ..... (June)

698

Construction Industry - Abandonment - Union certified for predecessor company in 1972 - Predecessor company employing non-union labour for intermittent subsequent construction work - Union failing to take reasonable steps to monitor activity at fixed location of predecessor company - Board finding abandonment of bargaining rights - Union's related employer and sale of business applications for successor company dismissed

AMERI-CANA MOTEL LIMITED AND 603185 ONTARIO LIMITED; RE C.J.A., LOCAL 38..... (Oct.)

1009

Construction Industry - Accreditation - Practice and Procedure - Board not compiling a Final Schedule "F" - Schedule consists of employers for whose employees the union has bargaining rights but who have not employed any of the represented employees within the prior year - Neither the number or identity of these employers is a factor in the Board's determination of whether the applicant should be accredited but applicant would have bargaining rights for these employers - Issue of whether these employees are bound by the accreditation order can be determined where a denial of bargaining rights arises in subsequent litigation - Unions agreeing to fulfil specific notice obligations and to waive any claim to damages in the first claim against each of these employers - Accreditation certificates issued for all employers of employees engaged in the operation of heavy equipment and truck drivers in the roads, sewers and water mains, and heavy engineering sectors in the Ottawa area

NATIONAL CAPITAL ROAD BUILDERS ASSOCIATION; RE I.U.O.E., LOCAL 793 AND TEAMSTERS, LOCAL 91; RE THE OPERATING ENGINEERS EMPLOYER BARGAINING AGENCY; RE THE LABOURERS EMPLOYER BARGAINING AGENCY ..... (Jan.)

31

Construction Industry - Bargaining Unit - Certification - Applicant's standard construction industry unit described in terms of journeymen and apprentice electricians - Appropriate to include in the unit for certification purposes only employees who are entitled to work in the trade pursuant to the *Apprenticeship and Tradesmen's Qualification Act* - Redundant to use words "qualified", "certified" or "registered" to describe either journeymen or apprentice electricians

P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105; RE P & M ELECTRIC LIMITED, POMICO HOLDINGS INC..... (June)

638

Construction Industry - Bargaining Unit - Certification - Board looking at issue of how S.117(b) applies to the issue of which employees should be included on the list of employees - S.117(b) not dictating that off-site shop employees must be included in any particular unit - Designation order requiring that both on and off-site mechanics be included in an operating engineers unit - *Gilvesy* "work done on date of application test" suitable for resolving disputes with respect to off-site employees

WRAYMAR CONSTRUCTION AND RENTAL SALES LTD.; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES..... (June)

682

Construction Industry - Bargaining Unit - Certification - Council of trade unions applying under s.144(1) for certification for unit including ICI sector - Applicant later requesting that its application be amended to one under s.144(3) to exclude the ICI sector - Whether council of trade unions can make an application under s.144(3) - Whether applicant attempting to gerrymander - Applicant allowed to amend its application

M.W.M. CONSTRUCTION OF KITCHENER LIMITED; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE GROUP OF EMPLOYEES..... (June)

635

Construction Industry - Bargaining Unit - Certification - Dependent Contractor - Employee - Board finding workers to be dependent contractors - Board declining to determine whether

worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing

SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 ..... (Nov.) 1181

Construction Industry - Bargaining Unit - Certification - Employer - Employer arguing an "all employee" unit was appropriate because it engaged in both construction and non-construction work with the same work force - Board holding that where a person operates a business in the construction industry a union is entitled to be certified pursuant to the construction industry provisions of the Act for the employees engaged in the construction part of the business - Employer's construction and non-construction activities not inextricably tied - Appropriate unit one consisting of construction labourers - Employer engaged in the restoration of the waterproofing capabilities of underground garages - Work considered to be repair and not maintenance - Work falling within the construction industry

KEITH HOLDSWORTH CONSULTING LTD.; RE L.I.U.N.A., LOCAL 183 ..... (June) 619

Construction Industry - Bargaining Unit - Certification - Employer - Whether rebricking of furnace in a smelter plant is maintenance or construction work - Respondent found to be an employer in the construction industry - Certificates issuing

BRIECAN CONST. LIMITED; RE U.A., LOCAL 800 ..... (May) 417

Construction Industry - Bargaining Unit - Certification - Membership Evidence - Practice and Procedure - Respondent making one non-pay allegation - Respondent suggesting the Board's investigation of the membership evidence ought to have extended beyond the respondent's specific allegation - Board does not conduct an investigation unless the membership evidence is irregular on its face or it receives specific particularized allegations of impropriety - Respondent not permitted to inspect membership evidence - Board satisfied with sufficiency of membership evidence and Form 80 declaration - Board rejecting argument that persons other than construction labourers should be included in labourers unit on community of interest grounds

GRANT CONSTRUCTION, DIVISION OF MALACHY GRANT AND ASSOCIATES; RE L.I.U.N.A., LOCAL 506..... (July) 766

Construction Industry - Bargaining Unit - Certification - Plumbers Union seeking clarity note indicating that welders working in the plumbing trade were employees in the unit - Board's concern is that persons employed be lawfully so engaged in certification applications relating to units described in terms of compulsory certified trades - Welding not a separate trade nor the subject of a designation order - Board declining to give clarity note for welders

O.J. PIPELINES INCORPORATED; RE U.A., LOCAL 800 ..... (Sept.) 976

Construction Industry - Bargaining Unit - Certification - Reconsideration - Request that Board reconsider its interpretation of the MTABA collective agreement and its decision to allow the Carpenters Union to carve out its craft from the concrete forming agreement - Reconsideration dismissed

ELLIS-DON LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE THE FORM WORK COUNCIL OF ONTARIO; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; RE MILNE & NICHOLLS LTD.; RE MOLLENHAUER LIMITED ..... (Mar.) 234

Construction Industry - Bargaining Unit - Certification - Union applying for unit of all labourers in the ICI sector province-wide plus all labourers in all other sectors in Board area 8 -



Employer arguing that labourers in Board area 18 should be included in the unit - Board concluding that employees in Board area 18 not properly on employee list

BEAVERBROOK ESTATES INC.; RE L.I.U.N.A., LOCAL 183; RE GROUP OF EMPLOYEES .....(Apr.) 322

Construction Industry - Bargaining Unit - Certification - Union making certification application under s.144 for the ICI sector and all other sectors in Board area 26 - Employer having employees in Board area 6 - Whether appropriate bargaining unit should be described in terms of both Board areas - Union not required to apply for more than one Board area

BELING CEMENT CONSTRUCTION LIMITED; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE GROUP OF EMPLOYEES .....(July) 709

Construction Industry - Bargaining Unit - Certification - Union seeking to carve out craft unit of concrete form workers from broader existing unit - Board reviewing jurisprudence on displacement applications in construction industry - Board following general practice of allowing craft to carve out in construction industry and having description of non-ICI portion of bargaining unit minor ICI portion

SHEARWALL FORMING (EAST) LTD.; RE C.J.A., LOCAL 27; RE THE FORM WORK COUNCIL OF ONTARIO; RE AUTOMATIC STRUCTURES LTD. ....(Dec.) 1254

Construction Industry - Certification - Applicant seeking certification under construction industry provisions - Evidence showing only two employees in bargaining unit - Employees in question not performing construction industry work for majority of time on date of application - Majority of time test appropriate to assist in determining whether employee falls within a construction "craft" - Application dismissed

EDDIE BAUER, 162706 CANADA INC.; RE C.J.A., LOCAL 27 ..... (Oct.) 1041

Construction Industry - Certification - Board construing statement in respondent's reply about its parking business to be claim respondent not engaged in construction industry - Board jurisdiction to certify under construction provisions dependent on employer operating business in construction industry - Board directing hearing into whether employer operating business in construction industry

MACDERO CONSTRUCTION LIMITED; RE L.I.U.N.A., LOCAL 183.....(Dec.) 1224

Construction Industry - Certification - Collective Agreement - Interveners arguing that certain persons employed by the respondents were hired contrary to the collective agreement and therefore should not be in the unit for purposes of the count - Board not applying *April Waterproofing* principle - Interveners made no reasonable effort to make sure that the respondents had complied with the hiring provisions in the agreement

AERO BLOCK AND PRECAST LTD., KAMET ENTERPRISES LTD. AND 541190 ONTARIO INC.; RE C.J.A.; RE THE FORM WORK COUNCIL OF ONTARIO; RE L.I.U.N.A., LOCAL 493..... (Feb.) 93

Construction Industry - Certification - Constitutional Law - Respondent an engineering consulting company which provides vibration monitoring and assessment services - Bell Canada constructing a fibreoptic telecommunications cable - Respondent hired by construction company building cable to protect a nearby natural gas pipeline - Respondent's argument that since the work was in relation to a pipeline the application was outside provincial jurisdiction dismissed - Board finding this to be construction work and respondent's employees to be construction labourers

VIBRATION ASSESSMENT LIMITED; RE L.I.U.N.A., LOCAL 607 ..... (Feb.) 223

Construction Industry - Certification - Dependent Contractor - Employee - Carpentry contractor contracting with pieceworkers to perform carpentry work on low-rise residential housing -

Pieceworkers may employ one or more “helpers” - Whether pieceworkers and helpers are employees of the carpentry contractor - Parties agreeing that a pieceworker with a single helper should be on the employee list - Board finding that helpers are the employees of the pieceworkers and not the carpentry contractor - Board determining that a pieceworker with more than one helper is an employer and independent contractor - In determining whether a pieceworker is an employer, the Board focuses on how many helpers a pieceworker employs on the application date and not simply how many helpers are at work on the application date

E.M. CARPENTRY (1982) LIMITED; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27 (FORMERLY LOCAL 1190); RE WESTROYAL CARPENTRY LTD.; RE CAMO CONSTRUCTION; RE B. BEZEAU FRAMING; RE PIPAU CONSTRUCTION; RE JOEB CONSTRUCTION; RE LOPES CARPENTRY; RE OLIVEIRA CARPENTRY CONTRACTORS; RE BELMONTE CARPENTRY LTD.; RE LANDL CONSTRUCTION; RE CAYOUEUETTE FRAMER; RE ZEMARS CARPENTERS LTD.; RE DIVO CONSTRUCTION; RE P & F CARPENTRY; RE M. LANTEIGNE CONSTRUCTION .....(Aug.)

829

Construction Industry - Certification - Employer - Whether respondent is an employer in the construction industry - Respondent replacing metal plates and pipes in recovery and steam plant at a pulp and paper mill during its annual shutdown - Work found to be maintenance work not repair - Application converted to one under the general provisions of the Act - All employee unit found appropriate - Certificate issuing

LEVERT & ASSOCIATES CONTRACTING INC.; RE B.B.F ..... (June)

630

Construction Industry - Certification - Employer Support - Fraud - Reconsideration - Employee requesting Board reconsider its decision to certify the union - Allegations that union received employer support and certificate obtained by fraud - Cogent evidence pointing to possible violation of s.13 sufficient ground for reconsideration - Delay of 13 months in making reconsideration request is a factor in considering whether to vary or revoke the decision

WALLCRAFT PAINTING AND DECORATING LTD.; RE P.A.T., LOCAL 557(Mar.)

306

Construction Industry - Certification - Intimidation and Coercion - Membership Evidence - Unfair Labour Practice - Employer alleging that union threatened employees with closing down the job unless they signed cards - Improper comments which could arguably cause employees to be concerned about their continued employment made by rank-and-file employee as part of his “salesmanship” of the union not leading Board to question the voluntariness of the membership evidence filed - Misrepresentations made by union official immediately clarified by same official the next day - Membership evidence voluntary - Certificate issuing

COVELLO BROTHERS LIMITED; RE L.I.U.N.A., LOCAL 837; RE C.J.A., LOCAL 38..... (Feb.)

119

Construction Industry - Certification - Membership Evidence - Respondent requesting a hearing to “test” the membership evidence - Any party asserting any irregular or improper conduct is obliged to give notice and full particulars of its allegations - With the exception of particularized allegations of non-sign or non-pay the Board does not conduct investigations into allegations of impropriety with respect to the solicitation of membership evidence - Such allegations must be made, particularized and proven by a party to the proceeding - Board disposing of application without a hearing

LONCO CONSTRUCTION LIMITED, CARADON DEVELOPMENTS INC.; RE L.I.U.N.A., LOCAL 1059 .....(Mar.)

274

Construction Industry - Certification - Natural Justice - Practice and Procedure - Union filing certification application on terminal date of prior application by different union - First appli-

cant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application

M. PICKARD CONSTRUCTION CO. LTD.; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES..... (Oct.)

1046

Construction Industry - Certification - Petition - Employees filing documents with the Board requesting a representation vote by secret ballot - Whether the "petitions" filed are evidence of objection by the employees to the certification and, if so, whether they are voluntary expressions of desire - Working foreman who circulated the petitions testifying that the petitions were drafted so that there would be a secret ballot vote - Board finding that the preamble was not a clear statement in opposition to the union - A request for a secret ballot vote is not tantamount to evidence of objection - Oral evidence supporting that conclusion - Documents not voluntary in any event - Certificates issuing

ACTION ELECTRICAL LTD.; RE I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES..... (Feb.)

79

Construction Industry - Certification - Practice and Procedure - 4 2= days between receipt of documents from the Registrar and the terminal date is sufficient time to respond to application - Application disposed of without hearing - Objections to certification from employer dismissed - Certificates issuing

B. MASKELL LIMITED; RE I.U.O.E., LOCAL 793..... (Apr.)

319

Construction Industry - Certification - Practice and Procedure - Legislation not contemplating "interim certificate" requested by union - Board practice confined to issuing decision on appropriateness of certification on interim basis - Request denied

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES..... (Oct.)

1053

Construction Industry - Certification - Practice and Procedure - Pre-Hearing Vote - Unfair Labour Practice - Applicant union seeking to convert its certification application in which a pre-hearing vote had been requested to one in which no such vote is requested - Board denying request - Unfair labour practice complaint that employer transferred two employees out of bargaining unit to frustrate certification application - Complaint dismissed - Employees in question not permitted to vote - One ballot left to count - Ballot of single employee to be unsealed and counted unless objection received from party

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION (Sept.)

972

Construction Industry - Certification - Practice and Procedure - Respondent employer requesting hearing in construction industry certification application - Board discussing membership evidence system in Ontario and certification procedure in the construction industry - Hearing denied - Certificates issuing

WESTDALE PAINTING & DECORATING LTD.; RE P.A.T., LOCAL 205..... (Sept.)

984

Construction Industry - Certification - Pre-Hearing Vote - Respondent failing to meet with officer to make voting arrangements or to file any lists of employees - Intervener arguing that the list should not be finalized in the absence of the respondent and the respondent's records -



Board refusing to convene a hearing on the issue - Vote ordered on the basis of the records of the applicant and available information - Ballot box sealed

VICTOR CARPENTRY LIMITED; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27..... (May)

524

Construction Industry - Certification - Related Employer - Labourers Union seeking in its certification application to have the respondent companies declared one employer - Bricklayers Union intervening in certification and filing its own related employer application - Whether Board will exercise its discretion to declare respondents one employer - Board dismissing Bricklayers' application because union did not act promptly but making one employer declaration in the Labourers application - Certification application scheduled for further hearing

GOTTCON CONTRACTORS LIMITED, GOTTARDO PROPERTIES (DOME) INC., GOTTARDO PROPERTIES LIMITED, GOTTARDO CONTRACTING (1980) INC., GOTTARDO CONTRACTING CO. LIMITED, GOTTARDO HOLDINGS COMPANY LTD., GOTTARDO MANAGEMENT LIMITED AND GOTTARDO CORPORATION; RE L.I.U.N.A., LOCAL 506; RE B.M.I.U., LOCAL 1 ..... (July)

757

Construction Industry - Collective Agreement - Construction Industry Grievance - Employer - Grievance alleging that Metro breached the collective agreement by contracting for the performance of electrical work with a contractor who was not a party to a collective agreement with the IBEW - Respondent Metro arguing it was not an "employer" in the construction industry but an owner and therefore not bound by the collective agreement - Board rejecting proposition that it is bound to consider whether the respondent to a reference to arbitration was acting as a person operating a business in the construction industry in respect of the subject matter of the grievance - Only issue is whether respondent's activities have violated the provincial agreement - Metro did not "sublet" work because it did not award a secondary contract - Grievance dismissed

TORONTO, THE MUNICIPALITY OF METROPOLITAN; RE I.B.E.W., LOCAL 353; RE THE ELECTRICAL TRADE BARGAINING AGENCY OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO ..... (Mar.)

279

Construction Industry - Collective Agreement - Construction Industry Grievance - Union local claiming voluntary recognition from Working Agreement signed by Council ten years prior to local's existence - Council unable to be agent of non-existent principal - Agreement not binding employer and union local - Grievance referral dismissed

EASTERN CONSTRUCTION COMPANY LIMITED; RE THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172 RESTORATION STEEPLE-JACKS..... (Nov.)

1105

Construction Industry - Collective Agreement - Employer - Judicial Review - Board finding Windsor Board of Education to be an employer in the construction industry - Employer relying on "gentleman's agreement" as constituting a bar to the union's contracting out grievance - Board declaring "gentleman's agreement" null and void as it applies to the ICI sector - Union not estopped from enforcing the ICI agreement - Board finding that ICI agreement breached - Windsor Board of Education bringing application for judicial review on the grounds that, *inter alia*, the Board declined jurisdiction when it refused to apply the doctrine of promissory estoppel and the Board erred in determining that the Windsor Board of Education was acting as an "employer" in these circumstances - Judicial review dismissed by Divisional Court

WINDSOR, THE BOARD OF EDUCATION FOR THE CITY OF; RE U.A., LOCAL 552 AND ONTARIO LABOUR RELATIONS BOARD ..... (Feb.)

231

- Construction Industry - Collective Agreement - Employer - Judicial Review - Board finding Windsor Board of Education to be an employer in the construction industry - Employer relying on "gentleman's agreement" as constituting a bar to the union's contracting out grievance - Board declaring "gentleman's agreement" null and void as it applies to the ICI sector - Union not estopped from enforcing the ICI agreement - Board finding that ICI agreement breached - Windsor Board of Education bringing application for judicial review on the grounds that, *inter alia*, the Board declined jurisdiction when it refused to apply the doctrine of promissory estoppel and the Board erred in determining that the Windsor Board of Education was acting as an "employer" in these circumstances - Judicial review dismissed by Divisional Court - Application by Windsor Board of Education for leave to appeal to the Court of Appeal dismissed
- WINDSOR, THE BOARD OF EDUCATION FOR THE CITY OF ; RE U.A., LOCAL 552 AND ONTARIO LABOUR RELATIONS BOARD ..... (June) 707
- Construction Industry - Construction Industry Grievance - Collective agreement requiring parties to negotiate where excessive walking time is involved - Board finding that a nine minute walk from the entrance gate to the brass shack was not excessive walking time - Grievance dismissed
- STONE & WEBSTER CANADA LIMITED; RE B.S.O.I.W., LOCAL 786; RE THE ONTARIO ERECTORS ASSOCIATION ..... (July) 804
- Construction Industry - Construction Industry Grievance - Discharge - Grievor fired by subcontractor because general contractor would not allow him to work on the job site in its belief that he had let off a firecracker - Whether grievor fired without just cause contrary to collective agreement - Subcontractor having cause to fire employee where the general contractor refuses to permit the employee to continue on the job - Circumstances indicating no just cause not present here - Grievance dismissed
- E. S. FOX LIMITED; RE I.B.E.W., LOCAL 353 ..... (July) 746
- Construction Industry - Construction Industry Grievance - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Union filing a grievance with the Board alleging that the employer had repeatedly breached the collective agreement - Union considered the litigation to be long, costly and unpredictable - Grievance settled prior to hearing following ratification by a majority of the bargaining unit members - Complainants considering terms of settlement unsatisfactory - Delay of 13 months before filing fair representation complaint - Board declining to inquire further into complaint on the basis of numerous policy considerations - Complaint dismissed
- CARTER, MARK AND BRAD CARTER; RE S.M.W., LOCAL 539; RE IMPERIAL INSULATION & ROOFING (1982) LIMITED ..... (Feb.) 112
- Construction Industry - Construction Industry Grievance - Employer failing to make proper income tax deductions from employee wages - Employer making deductions at later date - Union alleging breach of collective agreement and of *Employment Standards Act* prohibition against wage set-off - Collective agreement authorizing income tax deductions - Overpayment not "wages" within meaning of *Employment Standards Act* - Grievance dismissed
- CALLIGARO TILE COMPANY LIMITED; RE B.A.C. AND THE ONTARIO PROVINCIAL CONFERENCE OF B.A.C. .... (Oct.) 1014
- Construction Industry - Construction Industry Grievance - Evidence - Grievance alleging non-union hire in violation of ICI agreement - Respondent not attending hearing - Applicant must prove that the work was performed by persons who were employed by the respondent and that they were employed in violation of the collective agreement - Applicant must also

prove failure to make dues and other remittances - Applicant failing to prove the necessary elements of the grievance - Grievance dismissed

F & R CHARBONNEAU CONSTRUCTION ENR.; RE C.J.A., LOCAL 2041..... (Apr.)

348

Construction Industry - Damages - Remedies - Strike - Union threatening general contractor with picket line which would cause an unlawful strike - Board finding that threat made but relief not warranted - Request for damages in the context of an illegal strike or lockout application is inappropriate - Board also declining to make declaration because threat was an isolated one

GUILD ELECTRIC LIMITED; RE I.U.O.E., LOCAL 793, JOHN MONTI, JOSEPH KENNEDY, MR. MONTAGNESE, MR. RICCIUTO; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO ..... (Sept.)

969

Construction Industry - Evidence - Judicial Review - Picketing - Unfair Labour Practice - Picketing by Labourers Union found to be in breach of the Act - Purpose of picketing was to induce employers to grant bargaining rights to Labourers Union - Board granting declaratory relief to complainant Carpenters Union but not nullifying collective agreements - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board refused to permit the applicant to lead evidence going to remedy - Judicial review dismissed by Divisional Court

BAY-TOWER HOMES COMPANY LTD., BAY-TOWER MANAGEMENT INC., LEDI PROPERTIES INC., 518270 ONTARIO LIMITED, 554614 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 183, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27..... (June)

695

Construction Industry - Judicial Review - Parties - Practice and Procedure - Reconsideration - Termination - Termination application naming as respondents District Council and one local - International, District Council and all affiliated union locals necessary parties - Application dismissed at hearing - Board reconsidering its decision to dismiss and permitting applicants to amend the title of the application - Labourers Union bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law by failing to notify the Union that it intended to reconsider its decision and by failing to afford the Union an opportunity to make submissions - Judicial review dismissed by Divisional Court

DOUBLE S CONSTRUCTION, MICHAEL VAN LANDEGHEM, TRACY VAN LANDEGHEM AND TERRY MANZUTTI, ONTARIO LABOUR RELATIONS BOARD, 657572 ONTARIO INC., C.O.B. AS; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL, AND ITS AFFILIATED LOCAL UNIONS L.I.U.N.A., LOCALS 183 ET AL..... (June)

696

Construction Industry - Judicial Review - Practice and Procedure - Unfair Labour Practice - Complaint by Carpenters Union that Labourers Union negotiated collective agreements which contained subcontracting clauses requiring home builders to subcontract work to contractors in contractual relations with Labourers Union notwithstanding that the Union did not represent any of the employees employed by the home builders - Board declining to inquire into complaint due to delay in bringing matter on for hearing - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board wrongfully declined to exercise its jurisdiction and failed to observe the rules of natural justice in refusing to



inquire into the complaint - Judicial review dismissed by Divisional Court - Application by Carpenters Union for leave to appeal to the Court of Appeal dismissed

DELLBROOK HOMES, L.I.U.N.A., LOCAL 183, THE TORONTO HOUSING LABOUR BUREAU, PHILMOR DEVELOPMENTS LIMITED, MOR-ALICE CONSTRUCTION LIMITED, GREENPARK HOMES, HERON HOMES, BRAMALEA LIMITED, VICTORIA WOOD DEVELOPMENT CORPORATION INC., MICHAEL REILLY, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27..... (July)

823

Construction Industry - Jurisdictional Dispute - Practice and Procedure - Work in dispute involving the application of aluminum cladding or lagging over insulation applied to oven circulation ducts - Sheet Metal Union arguing that it would be unlawful for the Board to assign the work in dispute to persons who are not journeymen or apprentice sheet metal workers - *Apprenticeship Act* not stipulating that certain work can only be done by certain people - Board not prepared to find as a preliminary matter that the work could be done lawfully only by journeymen or apprentice sheet metal workers

E. S. FOX LIMITED, PRO INSUL LIMITED, S.M.W., LOCAL 562; RE H.F.I.A., LOCAL 95; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP; RE MASTER INSULATORS' ASSOCIATION OF ONTARIO INC. .... (July)

738

Construction Industry - Practice and Procedure - Related Employer - Employer filing related employer application in support of its request that the Board reconsider its decision to certify the Carpenters Union - Employer arguing certificate should be revoked because the Labourers Union holds the bargaining rights through its relationship with the related employers - Employer seeking leave to withdraw its related employer application after the release of *Ellis-Don* - Carpenters Union opposing request and asking that Board deal with application on its merits or treat employer's application as if it were the Carpenters' application - Board refusing employer leave to withdraw its application - Application to be heard on its merits

TACTIX CONSTRUCTION LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183 ..... (Aug.)

903

Construction Industry - Related Employer - Bricklayers Union alleging that City and Library Board were under common control or direction - Library Board established by statute in 1950 - Union members not used by Library Board when it constructed a library - Whether Board ought to exercise its discretion in favour of making a common employer declaration - Operations of two entities not integrated - Labour relations community treating similar entities as separate employers - Board dismissing application - Circumstances not warranting common employer declaration

ETOBICOKE PUBLIC LIBRARY BOARD, THE CORPORATION OF THE CITY OF, THE CORPORATION OF THE CITY OF ETOBICOKE; RE B.A.C., LOCAL 2 ..... (Sept.)

935

Construction Industry - Related Employer - Main business of each of the respondents differed but companies used interchangeably - Construction industry activities of the companies had a common meeting ground in sheet metal work and sandblasting and painting - Board finding that respondents carried on associated or related activities or businesses - Board rejecting argument that s.1(4) requires the entities to exist in law contemporaneously - Respondents found to be one employer

WARREN STEEPLEJACKS LIMITED, WARREN MECHANICAL LIMITED, BLASTCO CORPORATION; RE S.M.W., LOCAL 537 ..... (Mar.)

309

Construction Industry - Related Employer - One corporation performing concrete work on a bid

basis primarily for the construction industry - Other corporation engaged in a much broader scope of work - Most of its work underground but it also does concrete work - One employer declaration made

STEBILL LIMITED, HEMMIN MINE SERVICE LIMITED; RE L.I.U.N.A., LOCAL 607 .....(Apr.)

384

Construction Industry - Related Employer - Remedies - Sole officer and shareholder of Green-King Ltd. is the construction manager of Widcor Ltd. - Nothing in common between the two general contractors except the individual - Widcor Ltd. winding down its construction business and going into land development - Widcor Ltd. using the construction services of Green-King Ltd. to construct a car dealership - Board finding sufficient common direction and control to make one employer declaration but declaration limited to protecting the union's bargaining rights to those instances where Green-King Ltd. and Widcor Ltd. together engage in working in the construction industry

WIDCOR LIMITED AND GREEN-KING LTD.; RE C.J.A., LOCAL 27 .....(Jan.)

66

Construction Industry - Sector Determination - Installation of storm sewer pipe and catch basins on private property - Characteristics of excavation work a function of purpose of excavation - End use being sewer - Work characteristics distinct and same irrespective of installation on private property - Work typically performed by speciality contractors - Statutory scheme not requiring Board to exercise discretion with view to enlarging ICI sector - Work within sewers and watermain sector

STEEN CONTRACTORS LIMITED, L.I.U.N.A., LOCAL 597 AND; RE U.A., LOCAL 463; RE MILNE AND NICHOLLS/VANBOTS JOINT VENTURE; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE VALENTINE ENTERPRISES CONTRACTING, A DIVISION OF VALENTINE DEVELOPMENTS LIMITED; RE METROPOLITAN TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION; RE ONTARIO GENERAL CONTRACTORS ASSOCIATION; RE THE ONTARIO PIPE TRADES COUNCIL OF THE U.A.; RE CANADIAN AUTOMATIC SPRINKLER ASSOCIATION; RE U.A., LOCAL 853; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS CONSTRUCTION COUNCIL OF ONTARIO.....(Nov.)

1173

Construction Industry Grievance - Bargaining Rights - Judicial Review - Whether Painters Union acquired bargaining rights by means of a working agreement signed between the Toronto Building and Construction Trades Council and Harbridge - Harbridge held bound to Painters Union provincial agreement - Breach by Harbridge of sub-contracting clause - Harbridge bringing application for judicial review on the grounds that, *inter alia*, the Board's interpretation of the working agreement was patently unreasonable - Judicial review dismissed by Divisional Court

HARBRIDGE & CROSS LIMITED; RE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND ONTARIO LABOUR RELATIONS BOARD .....(July)

824

Construction Industry Grievance - Collective Agreement - Construction Industry - Employer - Grievance alleging that Metro breached the collective agreement by contracting for the performance of electrical work with a contractor who was not a party to a collective agreement with the IBEW -Respondent Metro arguing it was not an "employer" in the construction industry but an owner and therefore not bound by the collective agreement - Board rejecting proposition that it is bound to consider whether the respondent to a reference to arbitration was acting as a person operating a business in the construction industry in respect of the subject matter of the grievance - Only issue is whether respondent's activities have vio-

lated the provincial agreement - Metro did not "sublet" work because it did not award a secondary contract - Grievance dismissed

TORONTO, THE MUNICIPALITY OF METROPOLITAN; RE I.B.E.W., LOCAL 353; RE THE ELECTRICAL TRADE BARGAINING AGENCY OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO .....(Mar.)

279

Construction Industry Grievance - Collective Agreement - Construction Industry - Union local claiming voluntary recognition from Working Agreement signed by Council ten years prior to local's existence - Council unable to be agent of non-existent principal - Agreement not binding employer and union local - Grievance referral dismissed

EASTERN CONSTRUCTION COMPANY LIMITED; RE THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172 RESTORATION STEEPLE-JACKS.....(Nov.)

1105

Construction Industry Grievance - Construction Industry - Collective agreement requiring parties to negotiate where excessive walking time is involved - Board finding that a nine minute walk from the entrance gate to the brass shack was not excessive walking time - Grievance dismissed

STONE & WEBSTER CANADA LIMITED; RE B.S.O.I.W., LOCAL 786; RE THE ONTARIO ERECTORS ASSOCIATION .....(July)

804

Construction Industry Grievance - Construction Industry - Discharge - Grievor fired by subcontractor because general contractor would not allow him to work on the job site in its belief that he had let off a firecracker - Whether grievor fired without just cause contrary to collective agreement -Subcontractor having cause to fire employee where the general contractor refuses to permit the employee to continue on the job - Circumstances indicating no just cause not present here - Grievance dismissed

E. S. FOX LIMITED; RE I.B.E.W., LOCAL 353 .....(July)

746

Construction Industry Grievance - Construction Industry - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Union filing a grievance with the Board alleging that the employer had repeatedly breached the collective agreement - Union considered the litigation to be long, costly and unpredictable - Grievance settled prior to hearing following ratification by a majority of the bargaining unit members - Complainants considering terms of settlement unsatisfactory - Delay of 13 months before filing fair representation complaint - Board declining to inquire further into complaint on the basis of numerous policy considerations - Complaint dismissed

CARTER, MARK AND BRAD CARTER; RE S.M.W., LOCAL 539; RE IMPERIAL INSULATION & ROOFING (1982) LIMITED .....(Feb.)

112

Construction Industry Grievance - Construction Industry - Employer failing to make proper income tax deductions from employee wages - Employer making deductions at later date - Union alleging breach of collective agreement and of *Employment Standards Act* prohibition against wage set-off -Collective agreement authorizing income tax deductions - Overpayment not "wages" within meaning of *Employment Standards Act* - Grievance dismissed

CALLIGARO TILE COMPANY LIMITED; RE B.A.C. AND THE ONTARIO PROVINCIAL CONFERENCE OF B.A.C. ....(Oct.)

1014

Construction Industry Grievance - Construction Industry - Evidence - Grievance alleging non-union hire in violation of ICI agreement - Respondent not attending hearing - Applicant must prove that the work was performed by persons who were employed by the respondent and that they were employed in violation of the collective agreement - Applicant must also



prove failure to make dues and other remittances - Applicant failing to prove the necessary elements of the grievance - Grievance dismissed

F & R CHARBONNEAU CONSTRUCTION ENR.; RE C.J.A., LOCAL 2041..... (Apr.)

348

Construction Industry Grievance - Judicial Review - First grievance dismissed following request to withdraw late in proceedings - No cause of action or issue estoppel in regards to this grievance - Whether Painters acquired bargaining rights by means of a working agreement signed between the Toronto Building and Construction Trades Council and the respondent - Respondent held bound to painters provincial agreement - Breach of sub-contracting clause - Application for leave to appeal to the Court of Appeal dismissed

HARBRIDGE AND CROSS LIMITED; RE ONTARIO COUNCIL OF PAINTERS AND ALLIED TRADES AND ONTARIO LABOUR RELATIONS BOARD..... (Oct.)

1093

Contempt - Evidence - Stated Case - Witness - Principal of respondent refusing to produce employment forms without covering over personal information - Union stating case to Divisional Court - Refusal without lawful excuse - Conduct of principal constituting contempt notwithstanding subsequent compliance with Board order prior to court hearing - Directions and orders of Board must be complied with - Finding of contempt giving principal a criminal record - Sentence of 30 days in jail - Sentence suspended upon principal being on good behaviour

PLAZA FIBREGLAS MANUFACTURING LIMITED, SABINA CITRON, CITRON AUTOMOTIVE DIVISION OF, PLAZA ELECTRO-PLATING LIMITED, CITCOR MANUFACTURING LTD., AND THE ONTARIO LABOUR RELATIONS BOARD; RE U.S.W.A..... (May)

479

Contempt - Evidence - Stated Case - Witness - Principal of respondent refusing to produce employment forms without covering over personal information - Union stating case to Divisional Court - Refusal without lawful excuse - Conduct of principal constituting contempt notwithstanding subsequent compliance with Board order prior to court hearing - Directions and orders of Board must be complied with - Finding of contempt giving principal a criminal record - Sentence of 30 days in jail - Sentence suspended upon principal being on good behaviour - Application by principal for leave to appeal to the Court of Appeal dismissed

PLAZA FIBERGLAS MANUFACTURING LIMITED, PLAZA ELECTROPLATING LIMITED, CITCOR MANUFACTURING LTD., SABINA CITRON, CITRON AUTOMOTIVE DIVISION OF; RE U.S.W.A. AND THE ONTARIO LABOUR RELATIONS BOARD..... (June)

707

Crown Transfer - Abandonment - Bargaining Rights - Employer - Crown contracting out snow plowing, garbage pick-up, janitorial services, marking of trees and provincial park operations to individuals, partnerships and corporations - Whether contractors bound by collective agreement between union and Crown - Union knew of contracting out soon after it began in the early 1980's - Whether union abandoned bargaining rights - Whether contractors need to have employees to be "employers" within the meaning of the Act - Board declaring that all contractors bound by collective agreement

DUNNING PAVING LIMITED, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, AND; RE O.P.S.E.U.; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF NATURAL RESOURCES, AND BARRY LIGHTFOOT; RE JOHN KNIGHT AND LORRAINE NORRIS C.O.B. AS AGASSIZ FORESTRY/ENVIRONMENTAL SERVICES; RE JOHN MCCORMACK; RE ELSIE MCCORMACK; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES, AND WAYNE FORBES C.O.B. AS FORBES JANITORIAL SERVICES..... (July)

714

Crown Transfer - Timeliness - Union seeking declaration of Crown transfer for forestry survey and spraying contracted out by Ministry - Subject matter of contracts constituting "undertaking" within meaning of *Successor Rights (Crown Transfers) Act* - Undertakings "transferred" by tendering process - Transferees constituting "employers" - Performance of work by Crown employees immediately prior to transfer not prerequisite - Nothing in *Successor Rights (Crown Transfers) Act* to suggest union delay in seeking declaration releasing employer from effect of collective agreement - Board declaring Crown transfer

DUNNING PAVING LIMITED, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, AND; RE O.P.S.E.U.; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF NATURAL RESOURCES, AND BARRY LIGHTFOOT; RE SMITH FORESTRY ENTERPRISES; RE HOTCHKISS FORESTRY ENTERPRISES; RE JOHN KNIGHT AND LORRAINE NORRIS C.O.B. AS AGASSIZ FORESTRY/ENVIRONMENTAL SERVICES; RE NICOL SEGUIN; RE JOHN MCCORMACK; RE ELSIE MCCORMACK; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES, AND WAYNE FORBES C.O.B. AS FORBES JANITORIAL SERVICES ..... (Oct.)

1028

Damages - Construction Industry - Remedies - Strike - Union threatening general contractor with picket line which would cause an unlawful strike - Board finding that threat made but relief not warranted - Request for damages in the context of an illegal strike or lockout application is inappropriate - Board also declining to make declaration because threat was an isolated one

GUILD ELECTRIC LIMITED; RE I.U.O.E., LOCAL 793, JOHN MONTI, JOSEPH KENNEDY, MR. MONTAGNESE, MR. RICCIUTO; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO ..... (Sept.)

969

Damages - Parties - Practice and Procedure - Reconsideration - Unfair Labour Practice - Complainants arguing that Board erred in awarding damages only to the complainants - Argument that damages should be afforded to all employees affected by the breach of the Act dismissed - A complainant must have the authority to represent the grievors' interests - Complainants gave no indication during the proceedings that they were authorized to make a complaint on behalf of any other employees - Reconsideration application dismissed

CUDDY FOOD PRODUCTS LTD.; RE R.W.D.S.U., AFL:CIO:CLC; RE U.F.C.W., LOCAL 175 AND U.F.C.W., AFL-CIO-CLC; RE JOHN HENSON AND 25 OTHERS; RE DEB JOHNSTON AND OTHERS ..... (Feb.)

126

Dependent Contractor - Bargaining Unit - Certification - Construction Industry - Employee - Board finding workers to be dependent contractors - Board declining to determine whether worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing

SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 ..... (Nov.)

1181

Dependent Contractor - Bargaining Unit - Certification - Judicial Review - Stay - Board certifying union for two units of employees of taxi company, one of owner-operators and the other of drivers - Taxi company bringing motion to stay Board decision - Motion dismissed by Supreme Court of Ontario

HAMILTON YELLOW CAB LIMITED AND TRANSPORTATION UNLIMITED INC.; RE R.W.D.S.U., AFL-CIO-CLC AND THE ONTARIO LABOUR RELATIONS BOARD ..... (July)

824

Dependent Contractor - Bargaining Unit - Certification - Reconsideration - Board certifying

union for two units, one of owner operators/dependent contractors and the other of drivers  
- Board declining to reconsider its decision

HAMILTON YELLOW CAB COMPANY LIMITED, FLEET TAXI, YELLOW TAXI,  
TRANSPORTATION UNLIMITED INC., D. J. VAN BOORT ET AL; RE  
R.W.D.S.U., AFL-CIO-CLC ..... (Feb.)

144

Dependent Contractor - Certification - Construction Industry - Employee - Carpentry contractor  
contracting with pieceworkers to perform carpentry work on low-rise residential housing -  
Pieceworkers may employ one or more "helpers" - Whether pieceworkers and helpers are  
employees of the carpentry contractor - Parties agreeing that a pieceworker with a single  
helper should be on the employee list - Board finding that helpers are the employees of the  
pieceworkers and not the carpentry contractor - Board determining that a pieceworker with  
more than one helper is an employer and independent contractor - In determining whether  
a pieceworker is an employer, the Board focuses on how many helpers a pieceworker  
employs on the application date and not simply how many helpers are at work on the appli-  
cation date

E.M. CARPENTRY (1982) LIMITED; RE L.I.U.N.A., LOCAL 183; RE C.J.A.,  
LOCAL 27 (FORMERLY LOCAL 1190); RE WESTROYAL CARPENTRY LTD.; RE  
CAMO CONSTRUCTION; RE B. BEZEAU FRAMING; RE PIPAU CONSTRUC-  
TION; RE JOEB CONSTRUCTION; RE LOPES CARPENTRY; RE OLIVEIRA CAR-  
PENTRY CONTRACTORS; RE BELMONTE CARPENTRY LTD.; RE LANDL CON-  
STRUCTION; RE CAYOUEITE FRAMER; RE ZEMARS CARPENTERS LTD.; RE  
DIVO CONSTRUCTION; RE P & F CARPENTRY; RE M. LANTEIGNE  
CONSTRUCTION .....(Aug.)

829

Dependent Contractor - Discharge for Union Activity - Employee - Unfair Labour Practice -  
Union alleging that grievor was discharged in contravention of Act - Employer arguing that  
grievor was not an employee but an independent contractor - Employer in business of haul-  
ing raw forest products from logging sites to mills - Grievor was a hauling contractor -  
Whether grievor a dependent contractor and therefore an employee or an independent con-  
tractor - Grievor found to be an independent contractor - Complaint dismissed

ATWAY TRANSPORT INC.; RE I.W.A. .... (June)

540

Discharge - Change in Working Conditions - Evidence - Interference in Trade Unions - Practice  
and Procedure - Remedies - Unfair Labour Practice - Board taking into account findings of  
fact made by another panel with respect to issues put squarely before that panel in another  
proceeding involving the same parties - Respondent employer not appearing at hearing and  
therefore failing to discharge burden of proof - Multiple breaches of Act - Respondent not  
providing conduct money to witnesses it had summonsed and who had attended - Employ-  
er's actions may constitute unfair labour practice but Board has other means of enforcing  
the payment of conduct money - Board ordering that conduct money be paid and posting -  
Board declining to award costs

HAMILTON AUTOMATIC VENDING COMPANY LIMITED; RE CEMENT, LIME,  
GYPSUM AND ALLIED WORKERS DIVISION OF THE B.B.F. AND ITS LOCAL  
576 .....(Mar.)

248

Discharge - Construction Industry - Construction Industry Grievance - Grievor fired by subcon-  
tractor because general contractor would not allow him to work on the job site in its belief  
that he had let off a firecracker - Whether grievor fired without just cause contrary to col-  
lective agreement - Subcontractor having cause to fire employee where the general contrac-  
tor refuses to permit the employee to continue on the job - Circumstances indicating no just  
cause not present here - Grievance dismissed

E. S. FOX LIMITED; RE I.B.E.W., LOCAL 353 ..... (July)

746



Discharge - Unfair Labour Practice - Discharge of one of the main employee organizers for the CAW two months after the CAW was certified - Employee discharged because he entered the Personnel Manager's office without permission - Board dismissing complaint - Employee not discharged because he attended the certification hearing or because of his union activity generally	
RONAL CANADA INC.; RE C.A.W. .... (Jan.)	60
Discharge for Union Activity - Certification Where Act Contravened - Interference in Trade Unions - Unfair Labour Practice - Employer breaching Act by asking employees who had joined the union - Statements made at captive audience meeting breach of Act - Employer not meeting onus of demonstrating that it did not lay off employees because of the organizing campaign - Names of employees who were laid off contrary to the Act included on the list of employees - Certificates issuing - Unnecessary to determine s.8	
RAINSOON METAL SYSTEMS INCORPORATED; RE S.M.W., LOCAL 30. (May)	482
Discharge for Union Activity - Dependent Contractor - Employee - Unfair Labour Practice - Union alleging that grievor was discharged in contravention of Act - Employer arguing that grievor was not an employee but an independent contractor - Employer in business of hauling raw forest products from logging sites to mills - Grievor was a hauling contractor - Whether grievor a dependent contractor and therefore an employee or an independent contractor - Grievor found to be an independent contractor - Complaint dismissed	
ATWAY TRANSPORT INC.; RE I.W.A. .... (June)	540
Discharge for Union Activity - Unfair Labour Practice - Bartender discharged during his probationary period - Comfortable situation existing at workplace between management and long-term employees where the collective agreement not strictly adhered to - Equilibrium threatened when bartender hired - Discharge not contravening Act - Alleged theft was the only cause for the discharge	
BERESFORD TAVERN, 446285 ONTARIO LIMITED C.O.B.; RE LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS' AND BARTENDERS' UNION OF THE H.E.R.E. .... (May)	405
Duty of Fair Representation - Complainant winning promotion competition - Union supporting grievance of unsuccessful candidate - Complainant alleging union breached duty by failing to represent her at arbitration - Board reviewing content of duty - Where union properly supports interest of one bargaining unit member consistent with proper application and administration of collective agreement, union not also required to represent opposing interest - Union not guarantor of every aggrieved employee - Complaint dismissed	
MLAKAR, MARIA; RE C.U.P.E., LOCAL 79; RE THE MUNICIPALITY OF METROPOLITAN TORONTO .... (Dec.)	1246
Duty of Fair Representation - Construction Industry - Construction Industry Grievance - Practice and Procedure - Unfair Labour Practice - Union filing a grievance with the Board alleging that the employer had repeatedly breached the collective agreement - Union considered the litigation to be long, costly and unpredictable - Grievance settled prior to hearing following ratification by a majority of the bargaining unit members - Complainants considering terms of settlement unsatisfactory - Delay of 13 months before filing fair representation complaint - Board declining to inquire further into complaint on the basis of numerous policy considerations - Complaint dismissed	
CARTER, MARK AND BRAD CARTER; RE S.M.W., LOCAL 539; RE IMPERIAL INSULATION & ROOFING (1982) LIMITED .... (Feb.)	112
Duty of Fair Representation - Evidence - Health and Safety - Practice and Procedure - Unfair Labour Practice - Complainant fired for engaging in an illegal work stoppage - Discharge	

upheld by arbitrator - Complainant alleging he brought concern to union prior to arbitration that he was fired because he was the safety representative and that concern was not pursued - Respondent employer arguing that OHSa complaint should be dismissed because the complainant had elected to proceed by way of arbitration - OHSa complaint dismissed - Election made where the discipline of a worker has been litigated at arbitration - Fair representation complaint to proceed

ZALEV BROTHERS LIMITED; RE ROBERT MCINTYRE; RE U.S.W.A., LOCAL 14045 ..... (July)

810

Duty of Fair Representation - Evidence - Practice and Procedure - Unfair Labour Practice - Complainant alleging union did not represent him properly in having his seniority reinstated - Union moving for non-suit after complainant completing his evidence - Employer not joining in non-suit - Union submitting it should not be put to its election to call evidence - Putting union to its election would be futile because the employer could still call evidence - Board refusing to entertain non-suit motion - Complaint dismissed

BALKOS, PAUL; RE LAWSON PACKAGING TORONTO, A DIVISION OF THE LAWSON MARDON GROUP LIMITED AND G.C.I.U., LOCAL 500M ..... (Sept.)

932

Duty of Fair Representation - Ratification and Strike Vote - Unfair Labour Practice - Complainant occasional teacher failing to obtain a permanent teaching position and failing to obtain assignments as an occasional teacher - Employer denying complainant access to his complete personnel file - Whether union's failure to pursue grievance constituted a breach of fair representation duty - Whether the notice of union meetings violated the Act - Complaint dismissed - Complainant failing to show he had any entitlement to jobs or his file

ROCCA, PETER; RE ONTARIO CATHOLIC OCCASIONAL TEACHERS ASSOCIATION; RE METROPOLITAN SEPARATE SCHOOL BOARD ..... (Apr.)

371

Duty of Fair Representation - Unfair Labour Practice - Failure to pursue grievances to arbitration not breach of fair representation duty - Board not deciding issue of whether union's refusal to give the complainant a copy of the grievance filed on his behalf amounted to a breach of the Act - No remedy would have been granted in any event - Complaint dismissed

LINDSAY, BALFORD; RE C.A.W., LOCAL 1451; RE BUDD CANADA INC... (Mar.)

264

Duty of Fair Representation - Unfair Labour Practice - Union officials handling a bump - Employer challenging one of the job placements - Union and employer making special arrangements for employee after union admitted employee was not qualified for the job - Employee farther down in bumping line bringing fair representation complaint - Complaint dismissed

KALLA, NURDIN; RE A.T.U., LOCAL 113; RE TORONTO TRANSIT COMMISSION ..... (May)

459

Duty of Fair Representation - Unfair Labour Practice - Whether a trade union's duty of fair representation obliges it to represent bargaining unit employees in connection with workers' compensation proceedings - Extent of duty is co-extensive with the union's authority as exclusive bargaining agent - Union's duty does not extend to workers' compensation claims - Complaint dismissed

LOPEZ, LUIS; RE C.U.P.E. .... (May)

464

Duty to Bargain in Good Faith - Collective Agreement - Unfair Labour Practice - Collective agreement containing COLA clause negotiated - Employer believing COLA clause was suspended for the life of the agreement - Employer alleging that union breached its bargaining duty by not informing the employer of its mistaken belief - Union not obliged to question the employer's thinking when it makes a monetary offer - Complaint dismissed

NIAGARA BRONZE LIMITED; RE G.M.P. AND JACK ERSKINE, ET AL ..... (Aug.)

857

Duty to Bargain in Good Faith - Employer - Related Employer - Unfair Labour Practice - Life insurance company contracting out cleaning services - No common control or direction between the company and the cleaning contractor - Related employer application dismissed - Argument that life insurance company was the true employer of the workers performing the cleaning work dismissed - Complaint that cleaning contractor and life insurance company conspired to get rid of the unionized cleaners dismissed - Complaint against life insurance company that it was motivated by anti-union considerations dismissed - Complaint that company failed to disclose during collective bargaining its decision to contract out the cleaning services dismissed	
METROPOLITAN LIFE INSURANCE COMPANY; RE I.U.O.E., LOCAL 796; RE ALLEN MAINTENANCE LTD. .... (Feb.)	175
Duty to Bargain in Good Faith - Unfair Labour Practice - Respondent failing to disclose its intention to shut down one of its steam turbine generators operated by bargaining unit employees - Four positions eliminated and 21 employees realigned - <i>De facto</i> decision to shut down generator made prior to or in course of collective bargaining between parties - Breach of bargaining duty - Question of remedy remitted to parties	
CANADIAN PACIFIC FOREST PRODUCTS LIMITED; RE I.U.O.E., LOCAL 865 ..... (June)	569
Employee - Bargaining Unit - Certification - Construction Industry - Dependent Contractor - Board finding workers to be dependent contractors - Board declining to determine whether worker engaged by others employee or dependent contractor and whether included in unit - Unit description unaffected and majority support in any case - Parties having right to refer employee status question to Board at later date - Certificate issuing	
SUPREME CARPENTRY INC.; RE C.J.A., LOCAL 27 ..... (Nov.)	1181
Employee - Bargaining Unit - Certification - Employer - Whether a practice exists with respect to the use of part-time employees sufficient to warrant their exclusion from the bargaining unit - Use of part-timers restricted to 1988 - Board satisfied that a practice existed after looking at the nature of the business - Employer engaged in the preparation of soil for the home garden market - Employer not engaged in the business of agriculture and/or horticulture - Certificate issuing	
HILLVIEW FARMS LIMITED; RE U.F.C.W., LOCAL 1000A; RE GROUP OF EMPLOYEES ..... (Mar.)	259
Employee - Bargaining Unit - Certification - Individual riding around with employer's driver and helping to unload materials on an occasional basis - Individual given small sums of money or meal in return - Employer arguing that individual was a volunteer rather than an employee - Nature of employment relationship analyzed - Board finding that individual was a casual employee - Individual placed in unit with single other full-time employee - Certificate issuing	
CALVANO LUMBER & TRIM CO. LTD.; RE C.J.A., LOCAL 27 ..... (Apr.)	337
Employee - Bargaining Unit - Collective Agreement - Evidence - Termination - Union arguing that bargaining unit included a large number of temporary agency workers - Collective agreement describing "all employee" unit - Agency workers not included on list at certification - Union never seeking to represent agency workers until termination application filed - Board determining that agency workers should not be treated as employees "in the unit" for purposes of the termination application - Relisted for hearing on issue of voluntariness of petition	
WESTBURNE INDUSTRIAL ENTERPRISES LTD., NEDCO, DIVISION OF; RE TISH VASSAIR; RE TEAMSTERS UNION, LOCAL 419 ..... (June)	658



Employee - Certification - Construction Industry - Dependent Contractor - Carpentry contractor contracting with pieceworkers to perform carpentry work on low-rise residential housing - Pieceworkers may employ one or more "helpers" - Whether pieceworkers and helpers are employees of the carpentry contractor - Parties agreeing that a pieceworker with a single helper should be on the employee list - Board finding that helpers are the employees of the pieceworkers and not the carpentry contractor - Board determining that a pieceworker with more than one helper is an employer and independent contractor - In determining whether a pieceworker is an employer, the Board focuses on how many helpers a pieceworker employs on the application date and not simply how many helpers are at work on the application date

E.M. CARPENTRY (1982) LIMITED; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27 (FORMERLY LOCAL 1190); RE WESTROYAL CARPENTRY LTD.; RE CAMO CONSTRUCTION; RE B. BEZEAU FRAMING; RE PIPAU CONSTRUCTION; RE JOEB CONSTRUCTION; RE LOPES CARPENTRY; RE OLIVEIRA CARPENTRY CONTRACTORS; RE BELMONTE CARPENTRY LTD.; RE LANDL CONSTRUCTION; RE CAYOUEE FRAMER; RE ZEMARS CARPENTERS LTD.; RE DIVO CONSTRUCTION; RE P & F CARPENTRY; RE M. LANTEIGNE CONSTRUCTION .....(Aug.)

829

Employee - Certification - Evidence - Practice and Procedure - Witness - Board direction to file and exchange documents on which parties intend to rely - Respondent employer concerned that it could not approach employees who may be summonsed for examination in order to obtain information and documents - No property in a witness - Proper for a party to communicate with any examinee before he or she begins testifying if it is for the purpose of obtaining information relevant to the proceedings

ONTARIO HYDRO; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES; RE C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000; RE THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.A. STEVENSON, AND MICHELLE MORRISSEY-O'RYAN AND GEORGE ORR ON BEHALF OF CERTAIN OBJECTING EMPLOYEES..... (Sept.)

983

Employee - Dependent Contractor - Discharge for Union Activity - Unfair Labour Practice - Union alleging that grievor was discharged in contravention of Act - Employer arguing that grievor was not an employee but an independent contractor - Employer in business of hauling raw forest products from logging sites to mills - Grievor was a hauling contractor - Whether grievor a dependent contractor and therefore an employee or an independent contractor - Grievor found to be an independent contractor - Complaint dismissed

ATWAY TRANSPORT INC.; RE I.W.A. .... (June)

540

Employee - Employee Reference - Parties - Applicant individual requesting a determination as to the employee status of another individual - No "question" as to employee status arising between the parties - Procedure under s.106(2) not available to the applicant - Application dismissed

CHATELAINE VILLA NURSING HOME; RE TRACY CASTELLAN .....(Aug.)

827

Employee Reference - Employee - Parties - Applicant individual requesting a determination as to the employee status of another individual - No "question" as to employee status arising between the parties - Procedure under s.106(2) not available to the applicant - Application dismissed

CHATELAINE VILLA NURSING HOME; RE TRACY CASTELLAN .....(Aug.)

827

Employee Reference - Evidence - Practice and Procedure - Whether persons holding the position of "nurse manager, shift/weekend" are employees - Board asked to reassess its practice of

using the application date as the evidentiary cut-off - Date of actual commencement of the examination of the first witness selected where it is a newly-created position - Broader question of whether examination date should be the cut-off point for all s.106(2) applications not addressed - Persons in this classification not employees within the meaning of the Act

WHITBY GENERAL HOSPITAL; RE O.N.A. .... (June) 664

Employee reference - Practice and Procedure - Board outlining information to be filed in employee reference and Board procedure

HOTEL DIEU OF ST. JOSEPH'S HOSPITAL OF WINDSOR; RE O.N.A. .... (Dec.) 1221

Employee reference - Union requesting determination of bargaining unit status of head secretaries - Certificate issued on basis of agreement excluding head secretaries - Agreement reserving right of union to raise "consideration of their inclusion in the bargaining unit" - Board interpreting agreement to mean parties contemplated extension of bargaining rights by voluntary recognition at bargaining table - Board determination confined to employee-not bargaining unit-status - Board need not entertain application to determine employee status of individuals clearly excluded from bargaining rights where application meant to assist in voluntary recognition

BOARD OF EDUCATION FOR THE CITY OF ETOBICOKE; RE C.U.P.E. .... (Dec.) 1203

Employer - Abandonment - Bargaining Rights - Crown Transfer - Crown contracting out snow plowing, garbage pick-up, janitorial services, marking of trees and provincial park operations to individuals, partnerships and corporations - Whether contractors bound by collective agreement between union and Crown - Union knew of contracting out soon after it began in the early 1980's - Whether union abandoned bargaining rights - Whether contractors need to have employees to be "employers" within the meaning of the Act - Board declaring that all contractors bound by collective agreement

DUNNING PAVING LIMITED, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, AND; RE O.P.S.E.U.; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF NATURAL RESOURCES, AND BARRY LIGHTFOOT; RE JOHN KNIGHT AND LORRAINE NORRIS C.O.B. AS AGASSIZ FORESTRY/ENVIRONMENTAL SERVICES; RE JOHN MCCORMACK; RE ELSIE MCCORMACK; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES, AND WAYNE FORBES C.O.B. AS FORBES JANITORIAL SERVICES ..... (July) 714

Employer - Bargaining Unit - Certification - Construction Industry - Employer arguing an "all employee" unit was appropriate because it engaged in both construction and non-construction work with the same work force - Board holding that where a person operates a business in the construction industry a union is entitled to be certified pursuant to the construction industry provisions of the Act for the employees engaged in the construction part of the business - Employer's construction and non-construction activities not inextricably tied - Appropriate unit one consisting of construction labourers - Employer engaged in the restoration of the waterproofing capabilities of underground garages - Work considered to be repair and not maintenance - Work falling within the construction industry

KEITH HOLDSWORTH CONSULTING LTD.; RE L.I.U.N.A., LOCAL 183 .... (June) 619

Employer - Bargaining Unit - Certification - Construction Industry - Whether rebricking of furnace in a smelter plant is maintenance or construction work - Respondent found to be an employer in the construction industry - Certificates issuing

BRIECAN CONST. LIMITED; RE U.A., LOCAL 800 ..... (May) 417

Employer - Bargaining Unit - Certification - Employee - Whether a practice exists with respect to the use of part-time employees sufficient to warrant their exclusion from the bargaining unit - Use of part-timers restricted to 1988 - Board satisfied that a practice existed after looking at the nature of the business - Employer engaged in the preparation of soil for the home garden market - Employer not engaged in the business of agriculture and/or horticulture - Certificate issuing

HILLVIEW FARMS LIMITED; RE U.F.C.W., LOCAL 1000A; RE GROUP OF EMPLOYEES .....(Mar.)

259

Employer - Certification - Construction Industry - Whether respondent is an employer in the construction industry - Respondent replacing metal plates and pipes in recovery and steam plant at a pulp and paper mill during its annual shutdown - Work found to be maintenance work not repair - Application converted to one under the general provisions of the Act - All employee unit found appropriate - Certificate issuing

LEVERT & ASSOCIATES CONTRACTING INC.; RE B.B.F ..... (June)

630

Employer - Collective Agreement - Construction Industry - Construction Industry Grievance - Grievance alleging that Metro breached the collective agreement by contracting for the performance of electrical work with a contractor who was not a party to a collective agreement with the IBEW -Respondent Metro arguing it was not an “employer” in the construction industry but an owner and therefore not bound by the collective agreement - Board rejecting proposition that it is bound to consider whether the respondent to a reference to arbitration was acting as a person operating a business in the construction industry in respect of the subject matter of the grievance - Only issue is whether respondent’s activities have violated the provincial agreement - Metro did not “sublet” work because it did not award a secondary contract - Grievance dismissed

TORONTO, THE MUNICIPALITY OF METROPOLITAN; RE I.B.E.W., LOCAL 353; RE THE ELECTRICAL TRADE BARGAINING AGENCY OF THE ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO .....(Mar.)

279

Employer - Collective Agreement - Construction Industry - Judicial Review - Board finding Windsor Board of Education to be an employer in the construction industry - Employer relying on “gentleman’s agreement” as constituting a bar to the union’s contracting out grievance - Board declaring “gentleman’s agreement” null and void as it applies to the ICI sector - Union not estopped from enforcing the ICI agreement - Board finding that ICI agreement breached - Windsor Board of Education bringing application for judicial review on the grounds that, *inter alia*, the Board declined jurisdiction when it refused to apply the doctrine of promissory estoppel and the Board erred in determining that the Windsor Board of Education was acting as an “employer” in these circumstances - Judicial review dismissed by Divisional Court

WINDSOR, THE BOARD OF EDUCATION FOR THE CITY OF; RE U.A., LOCAL 552 AND ONTARIO LABOUR RELATIONS BOARD ..... (Feb.)

231

Employer - Collective Agreement - Construction Industry - Judicial Review - Board finding Windsor Board of Education to be an employer in the construction industry - Employer relying on “gentleman’s agreement” as constituting a bar to the union’s contracting out grievance - Board declaring “gentleman’s agreement” null and void as it applies to the ICI sector - Union not estopped from enforcing the ICI agreement - Board finding that ICI agreement breached - Windsor Board of Education bringing application for judicial review on the grounds that, *inter alia*, the Board declined jurisdiction when it refused to apply the doctrine of promissory estoppel and the Board erred in determining that the Windsor Board of Education was acting as an “employer” in these circumstances - Judicial review



dismissed by Divisional Court - Application by Windsor Board of Education for leave to appeal to the Court of Appeal dismissed

WINDSOR, BOARD OF EDUCATION FOR THE CITY OF; RE U.A., LOCAL 552 AND ONTARIO LABOUR RELATIONS BOARD ..... (June)

707

Employer - Duty to Bargain in Good Faith - Related Employer - Unfair Labour Practice - Life insurance company contracting out cleaning services - No common control or direction between the company and the cleaning contractor - Related employer application dismissed - Argument that life insurance company was the true employer of the workers performing the cleaning work dismissed - Complaint that cleaning contractor and life insurance company conspired to get rid of the unionized cleaners dismissed - Complaint against life insurance company that it was motivated by anti-union considerations dismissed - Complaint that company failed to disclose during collective bargaining its decision to contract out the cleaning services dismissed

METROPOLITAN LIFE INSURANCE COMPANY; RE I.U.O.E., LOCAL 796; RE ALLEN MAINTENANCE LTD. .... (Feb.)

175

Employer Support - Certification - Construction Industry - Fraud - Reconsideration - Employee requesting Board reconsider its decision to certify the union - Allegations that union received employer support and certificate obtained by fraud - Cogent evidence pointing to possible violation of s.13 sufficient ground for reconsideration - Delay of 13 months in making reconsideration request is a factor in considering whether to vary or revoke the decision

WALLCRAFT PAINTING AND DECORATING LTD.; RE P.A.T., LOCAL 557(Mar.)

306

Evidence - Adjournment - First Contract Arbitration - Practice and Procedure - Privilege - Board ruling that evidence of discussions between a mediator or conciliation officer and one of the parties was not admissible -Discussions involving Board Officer also not admitted - Admission would undermine the settlement process and the parties had agreed that the discussions were without prejudice - Respondent seeking an adjournment to retain other counsel because its own counsel would become a witness -Impossible to finish case within 30 day time limit - Time limits in section 40a(2) are directory not mandatory - Adjournment granted

DEL EQUIPMENT LIMITED, DEL HYDRAULICS LIMITED AND EDINBURGH ELECTRIC LIMITED; RE C.A.W. AND ITS LOCAL 303 .....(Jan.)

19

Evidence - Adjournment - Jurisdictional Dispute - Parties - Practice and Procedure - Demolition association requesting permission to intervene and asking for an adjournment - Association had not filed an intervention, attended the pre-hearing conference, or retained counsel - Board denying adjournment - Merits panel to decide intervener status issue - Board limiting the evidence of area and employer practice it will admit - Evidence limited to the demolition of similar structures in an operating environment in the province of Ontario - Statute compelling Board to inquire into work involving the same or similar type of structure in the same or similar type of environment

FOSTER WHEELER LIMITED, L.I.U.N.A., LOCAL 1089 AND; RE B.B.F., LOCAL 128 ..... (Feb.)

128

Evidence - Adjournment - Witness - Principal of respondent refusing to produce employment forms without covering over personal information - No lawful excuse for refusing to produce the documents as ordered by the Board - Board stating case to Divisional Court - Court ordering Board to give witness another opportunity to produce - Board scheduling

another hearing at which adjournment request by respondent denied - Witness continuing to refuse production - Matter adjourned

PLAZA FIBREGLAS MANUFACTURING LIMITED AND PLAZA ELECTRO-PLATING LTD. AND CITRON AUTOMOTIVE INDUSTRIES AND SABINA CITRON; RE U.S.W.A. .... (May)

479

Evidence - Bargaining Unit - Collective Agreement - Employee - Termination - Union arguing that bargaining unit included a large number of temporary agency workers - Collective agreement describing "all employee" unit - Agency workers not included on list at certification - Union never seeking to represent agency workers until termination application filed - Board determining that agency workers should not be treated as employees "in the unit" for purposes of the termination application - Relisted for hearing on issue of voluntariness of petition

WESTBURNE INDUSTRIAL ENTERPRISES LTD., NEDCO, DIVISION OF; RE TISH VASSAIR; RE TEAMSTERS UNION, LOCAL 419 ..... (June)

658

Evidence - Certification - Employee - Practice and Procedure - Witness - Board direction to file and exchange documents on which parties intend to rely - Respondent employer concerned that it could not approach employees who may be summonsed for examination in order to obtain information and documents - No property in a witness - Proper for a party to communicate with any examinee before he or she begins testifying if it is for the purpose of obtaining information relevant to the proceedings

ONTARIO HYDRO; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES; RE C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000; RE THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.A. STEVENSON, AND MICHELLE MORRISSEY-O'RYAN AND GEORGE ORR ON BEHALF OF CERTAIN OBJECTING EMPLOYEES..... (Sept.)

983

Evidence - Certification - Membership Evidence - Nature of inquiries made by Form 9 Declarant were such that the Form 9 was unsatisfactory - Declaration cannot be based on the assumption that a collector has carried out prior instructions or on an examination of the membership cards - Recall of collector as witness to establish that each applicant for membership had personally paid a dollar not permitted - Application dismissed

ESTONIAN RELIEF COMMITTEE IN CANADA; RE S.E.I.U., LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C.; RE GROUP OF EMPLOYEES ..... (May)

440

Evidence - Certification - Petition - Board discussing the effect of an earlier petition on the voluntariness of a later petition - Circumstances surrounding the prior circulation of a petition are relevant to the voluntariness of a subsequent document but the voluntariness of the signatures on the earlier document is not a relevant question - Petition found voluntary - Vote ordered

FRAM CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (Feb.)

133

Evidence - Certification - Practice and Procedure - Related Employer - Board determining procedure for dealing with certification and related employer applications involving ten respondents - Respondent arguing that Board is without jurisdiction to adjudicate the related employer application until it has determined the applicant's right to be certified for any or all respondents - Respondents argument that it is a prerequisite to a s.1(4) declaration that there exist some bargaining rights dismissed - Board determining that related employer application should be dealt with first - Applicant's request that certain documents be pro-

duced in advance of hearing granted - Board also encouraging parties to voluntarily produce in advance documents on which they intend to rely

ATWAY TRANSPORT INC.; RE I.W.A.; RE TAIGA TRUCKING (ONTARIO) 1980 INC.; RE MENROY TRUCKING INC.; RE DEMERS & DARGY TRANSPORT INC.; RE GOSSELIN TRUCKING; RE PAUL GAGNON TRUCKING; RE J. BERNARD TRUCKING; RE CONTRACTORS CLEANUP SERVICES LIMITED; RE L.I.U.N.A., LOCAL 706; RE KOPKA TRANSPORT INC.; RE PARAMOUNT TRANSPORTATION LIMITED ..... (Feb.)

101

Evidence - Certification Where Act Contravened - Membership Evidence - Unfair Labour Practice - Evidence of witness who was not subject to full cross-examination admissible - Surprisingly made tape-recording of a "captive" audience meeting of employees convened by an employer admissible in unfair labour practice complaint - Viva voce evidence permitted on membership cards missing dates - Threats and questioning of employees concerning the union breach of Act - Statements made at "captive" audience meeting breach of Act - Follow-up meeting not curing breaches - Discharge of employee after the union filed an unfair labour practice complaint on his behalf breach of Act - Union certified pursuant to s.8

ROYCE DUPONT POULTRY PACKERS; RE U.F.C.W., LOCAL 175, AFL-CIO-CLC; RE GROUP OF EMPLOYEES ..... (May)

492

Evidence - Change in Working Conditions - Discharge - Interference in Trade Unions - Practice and Procedure - Remedies - Unfair Labour Practice - Board taking into account findings of fact made by another panel with respect to issues put squarely before that panel in another proceeding involving the same parties - Respondent employer not appearing at hearing and therefore failing to discharge burden of proof - Multiple breaches of Act - Respondent not providing conduct money to witnesses it had summonsed and who had attended - Employer's actions may constitute unfair labour practice but Board has other means of enforcing the payment of conduct money - Board ordering that conduct money be paid and posting - Board declining to award costs

HAMILTON AUTOMATIC VENDING COMPANY LIMITED; RE CEMENT, LIME, GYPSUM AND ALLIED WORKERS DIVISION OF THE B.B.F. AND ITS LOCAL 576 ..... (Mar.)

248

Evidence - Construction Industry - Construction Industry Grievance - Grievance alleging non-union hire in violation of ICI agreement - Respondent not attending hearing - Applicant must prove that the work was performed by persons who were employed by the respondent and that they were employed in violation of the collective agreement - Applicant must also prove failure to make dues and other remittances - Applicant failing to prove the necessary elements of the grievance - Grievance dismissed

F & R CHARBONNEAU CONSTRUCTION ENR.; RE C.J.A., LOCAL 2041 ..... (Apr.)

348

Evidence - Construction Industry - Judicial Review - Picketing - Unfair Labour Practice - Picketing by Labourers Union found to be in breach of the Act - Purpose of picketing was to induce employers to grant bargaining rights to Labourers Union - Board granting declaratory relief to complainant Carpenters Union but not nullifying collective agreements - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board refused to permit the applicant to lead evidence going to remedy - Judicial review dismissed by Divisional Court

BAY-TOWER HOMES COMPANY LTD., BAY-TOWER MANAGEMENT INC., LEDI PROPERTIES INC., 518270 ONTARIO LIMITED, 554614 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 183, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27 ..... (June)

695



Evidence - Contempt - Stated Case - Witness - Principal of respondent refusing to produce employment forms without covering over personal information - Union stating case to Divisional Court - Refusal without lawful excuse - Conduct of principal constituting contempt notwithstanding subsequent compliance with Board order prior to court hearing - Directions and orders of Board must be complied with - Finding of contempt giving principal a criminal record - Sentence of 30 days in jail - Sentence suspended upon principal being on good behaviour

PLAZA FIBREGLAS MANUFACTURING LIMITED, SABINA CITRON, CITRON AUTOMOTIVE DIVISION OF, PLAZA ELECTRO-PLATING LIMITED, CITCOR MANUFACTURING LTD., AND THE ONTARIO LABOUR RELATIONS BOARD; RE U.S.W.A. .... (May)

528

Evidence - Contempt - Stated Case - Witness - Principal of respondent refusing to produce employment forms without covering over personal information - Union stating case to Divisional Court - Refusal without lawful excuse - Conduct of principal constituting contempt notwithstanding subsequent compliance with Board order prior to court hearing - Directions and orders of Board must be complied with - Finding of contempt giving principal a criminal record - Sentence of 30 days in jail - Sentence suspended upon principal being on good behaviour - Application by principal for leave to appeal to the Court of Appeal dismissed

PLAZA FIBERGLAS MANUFACTURING LIMITED, PLAZA ELECTROPLATING LIMITED, CITCOR MANUFACTURING LTD., SABINA CITRON, CITRON AUTOMOTIVE DIVISION OF; RE U.S.W.A. AND THE ONTARIO LABOUR RELATIONS BOARD ..... (June)

707

Evidence - Duty of Fair Representation - Health and Safety - Practice and Procedure - Unfair Labour Practice - Complainant fired for engaging in an illegal work stoppage - Discharge upheld by arbitrator - Complainant alleging he brought concern to union prior to arbitration that he was fired because he was the safety representative and that concern was not pursued - Respondent employer arguing that OHSA complaint should be dismissed because the complainant had elected to proceed by way of arbitration - OHSA complaint dismissed - Election made where the discipline of a worker has been litigated at arbitration - Fair representation complaint to proceed

ZALEV BROTHERS LIMITED; RE ROBERT MCINTYRE; RE U.S.W.A., LOCAL 14045 ..... (July)

810

Evidence - Duty of Fair Representation - Practice and Procedure - Unfair Labour Practice - Complainant alleging union did not represent him properly in having his seniority reinstated - Union moving for non-suit after complainant completing his evidence - Employer not joining in non-suit - Union submitting it should not be put to its election to call evidence - Putting union to its election would be futile because the employer could still call evidence - Board refusing to entertain non-suit motion - Complaint dismissed

BALKOS, PAUL; RE LAWSON PACKAGING TORONTO, A DIVISION OF THE LAWSON MARDON GROUP LIMITED AND G.C.I.U., LOCAL 500M ..... (Sept.)

932

Evidence - Employee Reference - Practice and Procedure - Whether persons holding the position of "nurse manager, shift/weekend" are employees - Board asked to reassess its practice of using the application date as the evidentiary cut-off - Date of actual commencement of the examination of the first witness selected where it is a newly-created position - Broader question of whether examination date should be the cut-off point for all s.106(2) applications not addressed - Persons in this classification not employees within the meaning of the Act

WHITBY GENERAL HOSPITAL; RE O.N.A. .... (June)

664

Evidence - Employer seeking to introduce into evidence a tape recorded telephone conversation between the president of the company and an employee who was the shop steward - Tape recording not admissible as an exception to the hearsay rule - Alleged "admission" was not authorized by the union

NICHOLLS-RADTKE LIMITED; RE U.A., LOCAL 46 AND BILL WEATHER-UP .....(Aug.) 860

Evidence - First Contract Arbitration - Practice and Procedure - Respondent objecting to the Board receiving a supplementary statement of material facts filed outside time limits in Practice Note - Board not granting leave to applicant to adduce evidence relating to the new allegations in its supplementary statement

PHILIPS AIR DISTRIBUTION LTD., LAU DIVISION -; RE C.A.W. .... (June) 642

Evidence - Health and Safety - Witness - Complainant calling Ministry health and safety inspector as witness - Director authorizing inspector to testify - *Occupational Health and Safety Act* providing inspector not compellable witness - Non-compellability waived - Inspector competent witness

BOEING CANADA/DEHAVILLAND DIVISION; RE JILL BETTES .....(Dec.) 1213

Evidence - Jurisdictional Dispute - Practice and Procedure - Complainant failing to comply with the Board's rules and practice note concerning filings - Respondents objecting to the introduction of two documents and any evidence of area practice - Board not allowing evidence in - Complaint involving the transportation of heavy equipment on float trucks - Criteria and delay of 10 years favouring status quo - Complaint dismissed

SPRUCE FALLS POWER AND PAPER COMPANY LIMITED, C.P.U., LOCAL 89, AND; RE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 ..... (June) 645

Evidence - Jurisdictional Dispute - Practice and Procedure - Jurisdictional dispute over the electrical instrumentation systems in a paper mill - Board authorizing a Vice-Chair to inquire into the complaint pursuant to s.103(2)(h) following the death of one of the Board members - Respondent bringing motion for non-suit following the completion of the complainant's case - Non-suit succeeding and complaint dismissed - Complainant not having produced evidence that might even arguably lead the Board to grant its claim in whole or in part

BOISE CASCADE CANADA LTD., AND I.B.E.W., LOCAL 1744; RE I.A.M., LODGE 771..... (May) 413

Evidence - Jurisdictional Dispute - Reconsideration - Request by respondent Labourers Union that Board reconsider its ruling to limit evidence of area practice to the demolition of similar structures in an operating environment in the province - Alleged denial of natural justice on the grounds of insufficient notice to parties and predetermination of issues of relevance and weight of evidence - Reconsideration denied - Parties who choose not to prepare themselves to deal with issues raised during a pre-hearing conference do so at their own peril

FOSTER WHEELER LIMITED, L.I.U.N.A., LOCAL 1089 AND; RE B.B.F., LOCAL 128 ..... (May) 451

Evidence - Membership Evidence - Steelworkers Union seeking reconsideration of Board decision consenting to the early termination of a collective agreement on the grounds that, *inter alia*, the employees did not have notice of the request - Union seeking to introduce membership cards to corroborate direct evidence relating to its organizing campaign - Cards of

limited probative value - Board exercising its discretion to refuse to admit the cards in evidence

GOLDCREST FURNITURE LTD.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847, AFFILIATED WITH THE TEAMSTERS UNION; RE GERARDO MERCANTE, VINCENZO REDA, FRANCO BINI AND U.S.W.A. .... (June)

604

Evidence - Parties - Petition - Termination - Union relying on the labour relations environment in the workplace in attacking the voluntariness of the petition to terminate the union's bargaining rights - Board hearing evidence but finding it of no relevance - Labour relations background only of relevance in an exceptional case where there is a pattern of notorious illegal anti-union conduct by employer - Whether an employee in one unit can apply to terminate union's bargaining rights in two other units - Board finding that applicant having status to bring applications - Votes ordered

THOROLD I.G.A. MARKET; RE SANDRA TAYLOR; RE U.F.C.W., LOCAL 175; RE GROUP OF EMPLOYEES; RE U.F.C.W., LOCAL 633 ..... (Aug.)

907

Evidence - Practice and Procedure - Company bringing non-suit once intervener union had introduced its evidence - Incumbent union concurring in the request to dismiss the application - Whether parties should be put to their election as to whether or not they wish to call evidence - Board discussing non-suit procedure where there are three parties to a proceeding and two bring a non-suit - Parties put to their election

GOLDCREST FURNITURE LTD.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847, AFFILIATED WITH THE TEAMSTERS UNION; RE GERARDO MERCANTE, VINCENZO REDA, FRANCO BINI AND THE U.S.W.A. .... (Sept.)

967

First Contract Arbitration - Adjournment - Evidence - Practice and Procedure - Privilege - Board ruling that evidence of discussions between a mediator or conciliation officer and one of the parties was not admissible - Discussions involving Board Officer also not admitted - Admission would undermine the settlement process and the parties had agreed that the discussions were without prejudice - Respondent seeking an adjournment to retain other counsel because its own counsel would become a witness - Impossible to finish case within 30 day time limit - Time limits in section 40a(2) are directory not mandatory - Adjournment granted

DEL EQUIPMENT LIMITED, DEL HYDRAULICS LIMITED AND EDINBURGH ELECTRIC LIMITED; RE C.A.W. AND ITS LOCAL 303 ..... (Jan.)

19

First Contract Arbitration - Bargaining Rights - Certification - Reconsideration - Trade Union Status - Applicant seeking to amend its name - Board permitting name to be amended - No prejudice to respondent - First contract application adjourned sine die pending the disposition of the union's request for reconsideration in a certification matter

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Aug.)

852

First Contract Arbitration - Evidence - Practice and Procedure - Respondent objecting to the Board receiving a supplementary statement of material facts filed outside time limits in Practice Note - Board not granting leave to applicant to adduce evidence relating to the new allegations in its supplementary statement

PHILIPS AIR DISTRIBUTION LTD., LAU DIVISION -; RE C.A.W. .... (June)

642

Fraud - Certification - Construction Industry - Employer Support - Reconsideration - Employee requesting Board reconsider its decision to certify the union - Allegations that union received employer support and certificate obtained by fraud - Cogent evidence pointing to



possible violation of s.13 sufficient ground for reconsideration - Delay of 13 months in making reconsideration request is a factor in considering whether to vary or revoke the decision

WALLCRAFT PAINTING AND DECORATING LTD.; RE P.A.T., LOCAL 557(Mar.)

306

Health and Safety - Charter of Rights and Freedoms - Judicial Review - Youth services officer at secured custody facility refusing to work at another location at the facility because of his belief that he would be putting his co-workers in danger - Officer completing shift at his regular location and receiving reprimand letters - OHSA providing that such persons do not have the right to refuse work which would endanger co-workers' safety - Board dismissing complaint - Worker cannot refuse work on the basis that some other provision in the Act creates a right to disobey the employer - Officer's actions constituting insubordination - Board not exercising discretion to substitute a different penalty - Officer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law and exceeded its jurisdiction in its interpretation of the OHSA and that the provision in the OHSA by which he was excluded from the right to refuse unsafe work was contrary to s.15, the equality provision, of the Canadian Charter of Rights and Freedoms - Judicial review dismissed by Divisional Court - Application by officer for leave to appeal to the Court of Appeal dismissed

MINISTRY OF COMMUNITY AND SOCIAL SERVICES, THE CROWN IN RIGHT OF ONTARIO AND ONTARIO LABOUR RELATIONS BOARD; RE DOUGLAS LLOYD ..... (June)

698

Health and Safety - Charter of Rights and Freedoms - Judicial Review - Youth services officer at secured custody facility refusing to work at another location at the facility because of his belief that he would be putting his co-workers in danger - Officer completing shift at his regular location and receiving reprimand letters - OHSA providing that such persons do not have the right to refuse work which would endanger their or co-workers' safety - Board dismissing complaint - Worker cannot refuse work on the basis that some other provision in the Act creates a right to disobey the employer - Officer's actions constituting insubordination - Board not exercising discretion to substitute a different penalty - Officer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law and exceeded its jurisdiction in its interpretation of the OHSA and the provision in the OHSA by which he was excluded from the right to refuse unsafe work was contrary to s.15, the equality provision, of the Canadian Charter of Rights and Freedoms - Judicial review dismissed by Divisional Court

MINISTRY OF COMMUNITY AND SOCIAL SERVICES, THE CROWN IN RIGHT OF ONTARIO AND ONTARIO LABOUR RELATIONS BOARD; RE DOUGLAS LLOYD ..... (Mar.)

316

Health and Safety - Complaint that worker suspended for exercising his right to refuse unsafe work - Alleged that suspension followed a previous complaint under OHSA and was done in a manner which denied him the right to a Safety Committee member - Employer maintaining that no complaint of unsafe work was made before the complainant was suspended for refusal to follow a legal order to clean a paint roller at a time when the paint line was stopped - Board finding that work refusal not motivated by health and safety concerns - Board not treating failure of the employer to investigate under the Act as a reason to find that the employer has not discharged its onus of proof - Complaint dismissed

CONTINUOUS COLOUR COAT LTD.; RE MARK DOUCETTE ..... (Jan.)

10

Health and Safety - Duty of Fair Representation - Evidence - Practice and Procedure - Unfair Labour Practice - Complainant fired for engaging in an illegal work stoppage - Discharge upheld by arbitrator - Complainant alleging he brought concern to union prior to arbitration that he was fired because he was the safety representative and that concern was not pursued - Respondent employer arguing that OHSA complaint should be dismissed

because the complainant had elected to proceed by way of arbitration - OHSa complaint dismissed - Election made where the discipline of a worker has been litigated at arbitration - Fair representation complaint to proceed

ZALEV BROTHERS LIMITED; RE ROBERT MCINTYRE; RE U.S.W.A., LOCAL 14045 ..... (July) 810

Health and Safety - Evidence - Witness - Complainant calling Ministry health and safety inspector as witness - Director authorizing inspector to testify - *Occupational Health and Safety Act* providing inspector not compellable witness - Non-compellability waived - Inspector competent witness

BOEING CANADA/DEHAVILLAND DIVISION; RE JILL BETTES ..... (Dec.) 1213

Interference in Trade Unions - Certification - Intimidation and Coercion - Pre-Hearing Vote - Applicant union claiming that pamphlets and cartoons distributed to employees by the incumbent union at the "11th" hour was so misleading as to warrant a second vote - Board reluctant to interfere in union election campaigns - Applicant union called no evidence indicating that the statements were false - Reasonable employees would see the material as propaganda in any event - No reason to believe the material would impair the employees' freedom to vote as they considered appropriate - Vote ordered counted

TRIDON LIMITED; RE C.A.W.; RE TRIDON EMPLOYEES' UNION ..... (Mar.) 295

Interference in Trade Unions - Certification Where Act Contravened - Change in Working Conditions - Unfair Labour Practice - Union alleging that employer failed to give its usual annual wage increase during the freeze - Reasonable expectations of employees contain an objective element - No breach of freeze - No interference with trade union - Ballots cast in representation vote ordered counted

COCA-COLA LTD.; RE U.F.C.W.; RE GROUP OF EMPLOYEES ..... (May) 427

Interference in Trade Unions - Certification Where Act Contravened - Discharge for Union Activity - Unfair Labour Practice - Employer breaching Act by asking employees who had joined the union - Statements made at captive audience meeting breach of Act - Employer not meeting onus of demonstrating that it did not lay off employees because of the organizing campaign - Names of employees who were laid off contrary to the Act included on the list of employees - Certificates issuing - Unnecessary to determine s.8

RAINSSCREEN METAL SYSTEMS INCORPORATED; RE S.M.W., LOCAL 30. (May) 482

Interference in Trade Unions - Certification Where Act Contravened - Intimidation and Coercion - Remedies - Interference in trade union found where employer questioned employees about union support, prohibited and punished union solicitation on company property, shut down plant to permit meetings of union opposition, transferred union supporters from regular jobs, posted foremen at hotel where union meeting taking place - Interference and intimidation found where employer monitored union leafletting at plant gate - Certification inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment files for solicitation, and provision to trade union of updated list of employees names and addresses

ONTARIO BUS INDUSTRIES INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (Nov.) 1115

Interference in Trade Unions - Change in Working Conditions - Discharge - Evidence - Practice and Procedure - Remedies - Unfair Labour Practice - Board taking into account findings of fact made by another panel with respect to issues put squarely before that panel in another

proceeding involving the same parties - Respondent employer not appearing at hearing and therefore failing to discharge burden of proof - Multiple breaches of Act - Respondent not providing conduct money to witnesses it had summonsed and who had attended - Employer's actions may constitute unfair labour practice but Board has other means of enforcing the payment of conduct money - Board ordering that conduct money be paid and posting - Board declining to award costs

HAMILTON AUTOMATIC VENDING COMPANY LIMITED; RE CEMENT, LIME, GYPSUM AND ALLIED WORKERS DIVISION OF THE B.B.F. AND ITS LOCAL 576 .....	(Mar.)	248
---	--------	-----

Interference in Trade Unions - Judicial Review - Charter of Rights - Mall owner appealing Divisional Court decision (reported at (1988) 62 O.R. 2d 337) upholding Board decision (reported as T. Eaton Company Limited, [1985] OLRB Rep. June 941) - Board found mall owner to have committed unfair labour practice by acting on behalf of employer to enforce no solicitation policy without reasonable business justification - Mall owner arguing Board exceeded jurisdiction by infringing on property rights and by finding mall owner acted on behalf of employer - Board acting within statutory authority and not exercising powers in patently unreasonable manner - Appeal dismissed

CADILLAC FAIRVIEW CORPORATION LIMITED AND T.E.C. LEASHOLDS LIMITED; RE R.W.D.S.U., AFL-CIO-CLC, T. EATON COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD .....	(Dec.)	1292
---	--------	------

Interference in Trade Unions - Unfair Labour Practice - Bargaining unit position eliminated and persons in those positions promoted out of unit to a pre-existing managerial classification - Whether any anti-union animus in the expansion of the managerial classification or in the number of people promoted - Employer distributing to both unionized and non-unionized employees pamphlets enunciating its personnel policy - Whether contrary to Act - Complaint dismissed with respect to the promotion of bargaining unit personnel but allowed with regards to the pamphlets - Effect of pamphlets was to confuse employees concerning the nature of the union's representation

SIMPSONS LIMITED; RE R.W.D.S.U., AFL-CIO-CLC: AND ITS LOCAL 1000	(May)	513
--	-------	-----

Interference in Trade Unions - Unfair Labour Practice - Union spokesman banned from employer's premises following altercation with management - Employer willing to deal with any other union representative or this representative but off its premises - Employer not engaged in a scheme to undermine the union's bargaining position - Problems best resolved through discussion and not Board intervention

VICTORY SOYA MILLS; RE TEAMSTERS UNION, LOCAL 1247 CHEMICAL, ENERGY AND ALLIED WORKERS .....	(June)	653
--	--------	-----

Intimidation and Coercion - Certification - Construction Industry - Membership Evidence - Unfair Labour Practice - Employer alleging that union threatened employees with closing down the job unless they signed cards - Improper comments which could arguably cause employees to be concerned about their continued employment made by rank-and-file employee as part of his "salesmanship" of the union not leading Board to question the voluntariness of the membership evidence filed - Misrepresentations made by union official immediately clarified by same official the next day - Membership evidence voluntary - Certificate issuing

COVELLO BROTHERS LIMITED; RE L.I.U.N.A., LOCAL 837; RE C.J.A., LOCAL 38.....	(Feb.)	119
--	--------	-----

Intimidation and Coercion - Certification - Interference in Trade Unions - Pre-Hearing Vote - Applicant union claiming that pamphlets and cartoons distributed to employees by the incumbent union at the "11th" hour was so misleading as to warrant a second vote - Board



reluctant to interfere in union election campaigns - Applicant union called no evidence indicating that the statements were false - Reasonable employees would see the material as propaganda in any event - No reason to believe the material would impair the employees' freedom to vote as they considered appropriate - Vote ordered counted

TRIDON LIMITED; RE C.A.W.; RE TRIDON EMPLOYEES' UNION.....(Mar.) 295

Intimidation and Coercion - Certification - Unfair Labour Practice - Reference to two-tiered union dues made by ordinary employee soliciting union membership - Reasonable employee not likely to be influenced by statements of fellow employee lacking power over union dues and engaged in partisan salesmanship - Employees having opportunity to seek clarification - Inaccurate statements in literature distributed by employer and union mere partisan salesmanship - Board refusing to discount membership evidence and certifying union

VENTURE INDUSTRIES CANADA LTD.; RE C.A.W.; RE GROUP OF EMPLOYEES..... (Oct.) 1074

Intimidation and Coercion - Certification Where Act Contravened - Interference in Trade Unions - Remedies - Interference in trade union found where employer questioned employees about union support, prohibited and punished union solicitation on company property, shut down plant to permit meetings of union opposition, transferred union supporters from regular jobs, posted foremen at hotel where union meeting taking place - Interference and intimidation found where employer monitored union leafletting at plant gate - Certification inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment files for solicitation, and provision to trade union of updated list of employees names and addresses

ONTARIO BUS INDUSTRIES INC.; RE C.A.W.; RE GROUP OF EMPLOYEES.....(Nov.) 1115

Intimidation and Coercion - Reconsideration - Remedies - Complainant requesting reconsideration on ground Board failed to make decision on merits - Board not required to decide on merits where lack of appropriate remedy makes issue moot - Board having discretion to inquire into section 89 complaint - Application dismissed

CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....(Dec.) 1218

Intimidation and Coercion - Remedies - Unfair Labour Practice - Employer leasing trucks from employees - Term of arrangement that employees having right to drive own truck - Owner/driver of truck sharing with spare driver - Owner/driver opposing memorandum of settlement favoured by spare driver and revoking spare driver's use of truck - Union seeking order that spare driver continue to drive truck - Injunctive relief inappropriate since loss of use of truck not result or effect of alleged breach - Complaint dismissed

CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U..... (Oct.) 1021

Judicial Review - Adjournment - Certification - Charter of Rights and Freedoms - Stay - Issue in certification cases involving the effect of the Charter on the security guard provision in the Act - Whether Charter issue should be postponed pending the release of the final decision in *Cuddy Chicks* concerning the Board's jurisdiction to deal with Charter issues - Adjournment denied - Labour relations considerations favouring expedition - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board exceeded its jurisdiction in attempting to hear a Charter challenge and failed to observe the principles of natural justice by forcing the parties to submit to a procedure that would not afford them an

opportunity to know the case they had to meet - Judicial review dismissed by Divisional Court

PINKERTON'S OF CANADA LTD.; RE O.L.R.B., RICHARD BIBEAULT, C.G.A., NATIONAL PROTECTIVE SERVICES COMPANY LIMITED, THE BOARD OF MANAGEMENT FOR THE METROPOLITAN TORONTO ZOO, BURNS INTERNATIONAL SECURITY SERVICES LIMITED, GORDON A. SOUTHRN, WACKENHUT OF CANADA LIMITED, SHANE FREEMAN, U.S.W.A., LARRY BISHOP, INCO LIMITED, INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA.....(Aug.)

924

Judicial Review - Bargaining Rights - Construction Industry Grievance - Whether Painters Union acquired bargaining rights by means of a working agreement signed between the Toronto Building and Construction Trades Council and Harbridge - Harbridge held bound to Painters Union provincial agreement - Breach by Harbridge of sub-contracting clause - Harbridge bringing application for judicial review on the grounds that, *inter alia*, the Board's interpretation of the working agreement was patently unreasonable - Judicial review dismissed by Divisional Court

HARBIDGE & CROSS LIMITED; RE ONTARIO COUNCIL OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES AND ONTARIO LABOUR RELATIONS BOARD .....(July)

824

Judicial Review - Bargaining Unit - Certification - Dependent Contractor - Stay - Board certifying union for two units of employees of taxi company, one of owner-operators and the other of drivers - Taxi company bringing motion to stay Board decision - Motion dismissed by Supreme Court of Ontario

HAMILTON YELLOW CAB LIMITED AND TRANSPORTATION UNLIMITED INC.; RE R.W.D.S.U., AFL-CIO-CLC AND THE ONTARIO LABOUR RELATIONS BOARD.....(July)

824

Judicial Review - Certification - Charter of Rights and Freedoms - Constitutional Law - Employees working under conditions akin to those in a factory - Employees responsible for monitoring the development of embryonic chickens - Employees found by Board to be persons employed in agriculture - Board holding that it has jurisdiction to entertain union's challenge that exclusion of persons employed in agriculture is contrary to the Charter - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law in finding itself to be a "court of competent jurisdiction" and in finding it has the authority to apply the Charter by virtue of s.52 of the *Constitution Act, 1982* - Judicial review dismissed by Divisional Court - Appeal dismissed by Court of Appeal.

CUDDY CHICKS LIMITED; RE ONTARIO LABOUR RELATIONS BOARD AND U.F.C.W., Local 175.....(Sept.)

989

Judicial Review - Certification - Constitutional Law - Board determining that there is a category of employees of Ontario Hydro who are employed on or in connection with works which by section 17 of the *Atomic Energy Control Act* have been declared to be works for the general advantage of Canada - Ontario Hydro bringing application for judicial review for a declaration that the *Labour Relations Act* applies to its nuclear workers - Divisional Court quashing Board decision and declaring that the provincial Act applies to the nuclear employees of Ontario Hydro

ONTARIO HYDRO; RE ONTARIO LABOUR RELATIONS BOARD, THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES, C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000, THE COALITION TO STOP CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.S. STEVENSON, MICHELLE MORRISSEY-O'RYAN, GEORGE ORR .....(June)

698

Judicial Review - Certification where act contravened - Charter of rights and freedoms - Unfair labour practice - Board determining that lay off of workers constituting unfair labour practice - Union certified pursuant to s.8 - Reverse onus not contrary to charter - Employer and employees bringing applications for judicial review on the grounds that, *inter alia*, the board misled the employees as to the evidence to be adduced and failed to find the reverse onus provision to be contrary to the charter - Judicial reviews dismissed by divisional court

KNOB HILL FARMS LIMITED, THE ONTARIO LABOUR RELATIONS BOARD AND U.F.C.W., LOCAL 206 AND; RE DONNA BAYDAK ON BEHALF OF A GROUP OF 156 EMPLOYEES ..... (June)

697

Judicial Review - Charter of Rights - Interference in Trade Unions - Mall owner appealing Divisional Court decision (reported at (1988) 62 O.R. 2d 337) upholding Board decision (reported as T. Eaton Company Limited, [1985] OLRB Rep. June 941) - Board found mall owner to have committed unfair labour practice by acting on behalf of employer to enforce no solicitation policy without reasonable business justification - Mall owner arguing Board exceeded jurisdiction by infringing on property rights and by finding mall owner acted on behalf of employer - Board acting within statutory authority and not exercising powers in patently unreasonable manner - Appeal dismissed

CADILLAC FAIRVIEW CORPORATION LIMITED AND T.E.C. LEASHOLDS LIMITED; RE R.W.D.S.U., AFL-CIO-CLC, T. EATON COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD ..... (Dec.)

1292

Judicial Review - Charter of Rights and Freedoms - Health and Safety - Youth services officer at secured custody facility refusing to work at another location at the facility because of his belief that he would be putting his co-workers in danger - Officer completing shift at his regular location and receiving reprimand letters - OHSA providing that such persons do not have the right to refuse work which would endanger co-workers' safety - Board dismissing complaint - Worker cannot refuse work on the basis that some other provision in the Act creates a right to disobey the employer - Officer's actions constituting insubordination - Board not exercising discretion to substitute a different penalty - Officer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law and exceeded its jurisdiction in its interpretation of the OHSA and that the provision in the OHSA by which he was excluded from the right to refuse unsafe work was contrary to s.15, the equality provision, of the Canadian Charter of Rights and Freedoms - Judicial review dismissed by Divisional Court - Application by officer for leave to appeal to the Court of Appeal dismissed

MINISTRY OF COMMUNITY AND SOCIAL SERVICES, THE CROWN IN RIGHT OF ONTARIO AND ONTARIO LABOUR RELATIONS BOARD; RE DOUGLAS LLOYD ..... (June)

698

Judicial Review - Charter of Rights and Freedoms - Health and Safety - Youth services officer at secured custody facility refusing to work at another location at the facility because of his belief that he would be putting his co-workers in danger - Officer completing shift at his regular location and receiving reprimand letters - OHSA providing that such persons do not have the right to refuse work which would endanger their or co-workers' safety - Board dismissing complaint - Worker cannot refuse work on the basis that some other provision in the Act creates a right to disobey the employer - Officer's actions constituting insubordination - Board not exercising discretion to substitute a different penalty - Officer bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law and exceeded its jurisdiction in its interpretation of the OHSA and the provision in the OHSA by which he was excluded from the right to refuse unsafe work was contrary to s.15, the



equality provision, of the Canadian Charter of Rights and Freedoms - Judicial review dismissed by Divisional Court

MINISTRY OF COMMUNITY AND SOCIAL SERVICES, THE CROWN IN RIGHT OF ONTARIO AND ONTARIO LABOUR RELATIONS BOARD; RE DOUGLAS LLOYD .....(Mar.)

316

Judicial Review - Collective Agreement - Construction Industry - Employer - Board finding Windsor Board of Education to be an employer in the construction industry - Employer relying on "gentleman's agreement" as constituting a bar to the union's contracting out grievance - Board declaring "gentleman's agreement" null and void as it applies to the ICI sector - Union not estopped from enforcing the ICI agreement - Board finding that ICI agreement breached - Windsor Board of Education bringing application for judicial review on the grounds that, *inter alia*, the Board declined jurisdiction when it refused to apply the doctrine of promissory estoppel and the Board erred in determining that the Windsor Board of Education was acting as an "employer" in these circumstances - Judicial review dismissed by Divisional Court

WINDSOR, THE BOARD OF EDUCATION FOR THE CITY OF; RE U.A., LOCAL 552 AND ONTARIO LABOUR RELATIONS BOARD..... (Feb.)

231

Judicial Review - Collective Agreement - Construction Industry - Employer - Board finding Windsor Board of Education to be an employer in the construction industry - Employer relying on "gentleman's agreement" as constituting a bar to the union's contracting out grievance - Board declaring "gentleman's agreement" null and void as it applies to the ICI sector - Union not estopped from enforcing the ICI agreement - Board finding that ICI agreement breached - Windsor Board of Education bringing application for judicial review on the grounds that, *inter alia*, the Board declined jurisdiction when it refused to apply the doctrine of promissory estoppel and the Board erred in determining that the Windsor Board of Education was acting as an "employer" in these circumstances - Judicial review dismissed by Divisional Court - Application by Windsor Board of Education for leave to appeal to the Court of Appeal dismissed

WINDSOR, BOARD OF EDUCATION FOR THE CITY OF; RE U.A., LOCAL 552 AND ONTARIO LABOUR RELATIONS BOARD ..... (June)

707

Judicial Review - Construction Industry - Evidence - Picketing - Unfair Labour Practice - Picketing by Labourers Union found to be in breach of the Act - Purpose of picketing was to induce employers to grant bargaining rights to Labourers Union - Board granting declaratory relief to complainant Carpenters Union but not nullifying collective agreements - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board refused to permit the applicant to lead evidence going to remedy - Judicial review dismissed by Divisional Court

BAY-TOWER HOMES COMPANY LTD., BAY-TOWER MANAGEMENT INC., LEDI PROPERTIES INC., 518270 ONTARIO LIMITED, 554614 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 183, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27..... (June)

695

Judicial Review - Construction Industry - Parties - Practice and Procedure - Reconsideration - Termination - Termination application naming as respondents District Council and one local - International, District Council and all affiliated union locals necessary parties - Application dismissed at hearing - Board reconsidering its decision to dismiss and permitting applicants to amend the title of the application - Labourers Union bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law by failing to notify

the Union that it intended to reconsider its decision and by failing to afford the Union an opportunity to make submissions - Judicial review dismissed by Divisional Court

DOUBLE S CONSTRUCTION, MICHAEL VAN LANDEGHEM, TRACY VAN LANDEGHEM AND TERRY MANZUTTI, ONTARIO LABOUR RELATIONS BOARD, 657572 ONTARIO INC., C.O.B. AS; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL, AND ITS AFFILIATED LOCAL UNIONS L.I.U.N.A., LOCALS 183 ET AL..... (June)

696

Judicial Review - Construction Industry - Practice and Procedure - Unfair Labour Practice - Complaint by Carpenters Union that Labourers Union negotiated collective agreements which contained subcontracting clauses requiring home builders to subcontract work to contractors in contractual relations with Labourers Union notwithstanding that the Union did not represent any of the employees employed by the home builders - Board declining to inquire into complaint due to delay in bringing matter on for hearing - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board wrongfully declined to exercise its jurisdiction and failed to observe the rules of natural justice in refusing to inquire into the complaint - Judicial review dismissed by Divisional Court - Application by Carpenters Union for leave to appeal to the Court of Appeal dismissed

DELLBROOK HOMES, L.I.U.N.A., LOCAL 183, THE TORONTO HOUSING LABOUR BUREAU, PHILMOR DEVELOPMENTS LIMITED, MOR-ALICE CONSTRUCTION LIMITED, GREENPARK HOMES, HERON HOMES, BRAMALEA LIMITED, VICTORIA WOOD DEVELOPMENT CORPORATION INC., MICHAEL REILLY, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27..... (July)

823

Judicial Review - Construction Industry Grievance - First grievance dismissed following request to withdraw late in proceedings - No cause of action or issue estoppel in regards to this grievance - Whether Painters acquired bargaining rights by means of a working agreement signed between the Toronto Building and Construction Trades Council and the respondent - Respondent held bound to painters provincial agreement - Breach of sub-contracting clause - Application for leave to appeal to the Court of Appeal dismissed

HARBRIDGE AND CROSS LIMITED; RE ONTARIO COUNCIL OF PAINTERS AND ALLIED TRADES AND ONTARIO LABOUR RELATIONS BOARD..... (Oct.)

1093

Judicial Review - Practice and Procedure - Unfair Labour Practice - Complaint by Carpenters Union that Labourers Union negotiated collective agreements which contained subcontracting clauses requiring home builders to subcontract work to contractors in contractual relations with Labourers Union notwithstanding that the Union did not represent any of the employees employed by the home builders - Board declining to inquire into complaint due to delay in bringing matter on for hearing - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board wrongfully declined to exercise its jurisdiction and failed to observe the rules of natural justice in refusing to inquire into the complaint - Judicial review dismissed by Divisional Court

DELLBROOK HOMES, THE TORONTO HOUSING LABOUR BUREAU, PHILMOR DEVELOPMENTS LIMITED, MOR-ALICE CONSTRUCTION LIMITED, GREENPARK HOMES, HERON HOMES, BRAMALEA LIMITED, VICTORIA WOOD DEVELOPMENT CORPORATION INC., TWO STAR CONSTRUCTION LTD., MICHAEL REILLY, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183..... (Mar.)

315

Judicial Review - Related Employer - Unfair Labour Practice - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, *inter alia*, the Board erred in finding that related

business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court

G.P. CONSTRUCTION, 556631 ONTARIO LIMITED, C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD ..... (June) 696

Judicial Review - Related Employer - Unfair Labour Practice - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, *inter alia*, the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court - Application for leave to appeal to the Court of Appeal dismissed

G.P. CONSTRUCTION, 556631 ONTARIO LIMITED C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Oct.) 1092

Jurisdictional Dispute - Adjournment - Evidence - Parties - Practice and Procedure - Demolition association requesting permission to intervene and asking for an adjournment - Association had not filed an intervention, attended the pre-hearing conference, or retained counsel - Board denying adjournment - Merits panel to decide intervener status issue - Board limiting the evidence of area and employer practice it will admit - Evidence limited to the demolition of similar structures in an operating environment in the province of Ontario - Statute compelling Board to inquire into work involving the same or similar type of structure in the same or similar type of environment

FOSTER WHEELER LIMITED, L.I.U.N.A., LOCAL 1089 AND; RE B.B.F., LOCAL 128 ..... (Feb.) 128

Jurisdictional Dispute - Complaint by the ILA that the off-loading and movement of waste paper bales from trucks and railcars to the pulp processing system should not have been assigned to the CPU - Introduction of new process impetus for employer to assign to the CPU all of the work - Board directing assignment of work to CPU continue but that CPU accept into its bargaining jurisdiction employees who were working within the bargaining jurisdiction of the ILA

QUEBEC AND ONTARIO PAPER COMPANY LTD., C.P.U., LOCAL 84 AND; RE I.L.A., LOCAL 1477 ..... (July) 796

Jurisdictional Dispute - Construction Industry - Practice and Procedure - Work in dispute involving the application of aluminum cladding or lagging over insulation applied to oven circulation ducts - Sheet Metal Union arguing that it would be unlawful for the Board to assign the work in dispute to persons who are not journeymen or apprentice sheet metal workers - *Apprenticeship Act* not stipulating that certain work can only be done by certain people - Board not prepared to find as a preliminary matter that the work could be done lawfully only by journeymen or apprentice sheet metal workers

E. S. FOX LIMITED, PRO INSUL LIMITED, S.M.W., LOCAL 562; RE H.F.I.A., LOCAL 95; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP; RE MASTER INSULATORS' ASSOCIATION OF ONTARIO INC. .... (July) 738

Jurisdictional Dispute - Employer creating a new position of Registered Nurse - Alcohol and Addiction Program - Job filled within ONA bargaining unit - OPSEU claiming that the position should be assigned to its members - Complaint dismissed

SUDBURY ALGOMA HOSPITAL; RE O.N.A. AND O.P.S.E.U ..... (Apr.) 390

Jurisdictional Dispute - Evidence - Practice and Procedure - Complainant failing to comply with the Board's rules and practice note concerning filings - Respondents objecting to the intro-



duction of two documents and any evidence of area practice - Board not allowing evidence in - Complaint involving the transportation of heavy equipment on float trucks - Criteria and delay of 10 years favouring status quo - Complaint dismissed

SPRUCE FALLS POWER AND PAPER COMPANY LIMITED, C.P.U., LOCAL 89, AND; RE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 ..... (June)

645

Jurisdictional Dispute - Evidence - Practice and Procedure - Jurisdictional dispute over the electrical instrumentation systems in a paper mill - Board authorizing a Vice-Chair to inquire into the complaint pursuant to s.103(2)(h) following the death of one of the Board members - Respondent bringing motion for non-suit following the completion of the complainant's case - Non-suit succeeding and complaint dismissed - Complainant not having produced evidence that might even arguably lead the Board to grant its claim in whole or in part

BOISE CASCADE CANADA LTD., AND I.B.E.W., LOCAL 1744; RE I.A.M., LODGE 771..... (May)

413

Jurisdictional Dispute - Evidence - Reconsideration - Request by respondent Labourers Union that Board reconsider its ruling to limit evidence of area practice to the demolition of similar structures in an operating environment in the province - Alleged denial of natural justice on the grounds of insufficient notice to parties and predetermination of issues of relevance and weight of evidence - Reconsideration denied - Parties who choose not to prepare themselves to deal with issues raised during a pre-hearing conference do so at their own peril

FOSTER WHEELER LIMITED, L.I.U.N.A., LOCAL 1089 AND; RE B.B.F., LOCAL 128 ..... (May)

451

Jurisdictional Dispute - Jurisdictional dispute complaint filed by contractor in defence of a grievance filed by the Labourers Union - Complainant contracting for the supply and installation of drywall - Complaint relating to the off-loading, conveying and stock-piling of drywall - Work done by the supplier of building materials - Delivery included in price of materials - Union made no demand on the supplier as "employer" under s. 91 - Board without jurisdiction to hear complaint

FOUR SEASONS DRYWALL SYSTEMS AND ACOUSTICS LIMITED; RE L.I.U.N.A., LOCAL 506 AND DRYWALL, ACOUSTIC, LATHING AND INSULATION, LOCAL 675 OF THE C.J.A. .... (June)

599

Jurisdictional Dispute - Parties - Settlement - Constituent of Carpenters' Employers' Bargaining Agency not entitled to be a party to the jurisdictional dispute - Whether an oral settlement of the complaint had been reached - Board finding that counter-offer made which nullified the offer of settlement - No longer any offer on the table for acceptance - No settlement - Hearings to continue

FERANO CONSTRUCTION LIMITED, L.I.U.N.A., LOCAL 527, AND L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE C.J.A., LOCAL 2041 ..... (May)

446

Jurisdictional Dispute - Practice and Procedure - Sector Determination - Whether work in dispute falls within ICI sector - Project involving the construction of a passenger terminal building at the airport - Specific work in dispute involving the departures level bridge - Board setting out its reasons for directing that notice of the s.150 proceeding be given to any person having a direct connection with the Terminal 3 site project - Decision in a s.150 proceeding has province-wide application if work characteristics are to determine whether the work falls within a particular sector - Notice should be given to the widest practical constituency

DUFFERIN CONSTRUCTION COMPANY; RE C.J.A., LOCAL 27; RE THE FOUNDATION COMPANY OF CANADA LIMITED; RE L.I.U.N.A., LOCAL 183; RE DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF ST. LAWRENCE CEMENT INC. .... (Jan.)

25

Jurisdictional Dispute - Remedies - Settlement - Unfair Labour Practice - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint

REXWAY SHEET METAL LIMITED, U.A., LOCAL 46 AND D. CLARK, WATTS & HENDERSON LIMITED, ENGLISH & MOULD LIMITED; RE S.M.W., LOCAL 30.....(Nov.) 1154

Membership Evidence - Bargaining Unit - Certification - Construction Industry - Practice and Procedure - Respondent making one non-pay allegation - Respondent suggesting the Board's investigation of the membership evidence ought to have extended beyond the respondent's specific allegation - Board does not conduct an investigation unless the membership evidence is irregular on its face or it receives specific particularized allegations of impropriety - Respondent not permitted to inspect membership evidence - Board satisfied with sufficiency of membership evidence and Form 80 declaration - Board rejecting argument that persons other than construction labourers should be included in labourers unit on community of interest grounds

GRANT CONSTRUCTION, DIVISION OF MALACHY GRANT AND ASSOCIATES; RE L.I.U.N.A., LOCAL 506.....(July) 766

Membership Evidence - Certification - Board inquiring into the reliability of the Form 9 - Place of Form 9 in certification proceedings reviewed - Board satisfied with the reliability of the Form 9 - Ballots counted - Application dismissed

CUDDY FOOD PRODUCTS, CUDDY FOOD PRODUCTS LTD. AND CUDDY INTERNATIONAL CORPORATION C.O.B. AS A PARTNERSHIP IN THE NAME OF; RE R.W.D.S.U., AFL:CIO:CLC.; RE U.F.C.W., LOCAL 175, AFL-CIO-CLC .....(June) 583

Membership Evidence - Certification - Construction Industry - Intimidation and Coercion - Unfair Labour Practice - Employer alleging that union threatened employees with closing down the job unless they signed cards - Improper comments which could arguably cause employees to be concerned about their continued employment made by rank-and-file employee as part of his "salesmanship" of the union not leading Board to question the voluntariness of the membership evidence filed - Misrepresentations made by union official immediately clarified by same official the next day - Membership evidence voluntary - Certificate issuing

COVELLO BROTHERS LIMITED; RE L.I.U.N.A., LOCAL 837; RE C.J.A., LOCAL 38.....(Feb.) 119

Membership Evidence - Certification - Construction Industry - Respondent requesting a hearing to "test" the membership evidence - Any party asserting any irregular or improper conduct is obliged to give notice and full particulars of its allegations - With the exception of particularized allegations of non-sign or non-pay the Board does not conduct investigations into allegations of impropriety with respect to the solicitation of membership evidence - Such allegations must be made, particularized and proven by a party to the proceeding - Board disposing of application without a hearing

LONCO CONSTRUCTION LIMITED, CARADON DEVELOPMENTS INC.; RE L.I.U.N.A., LOCAL 1059 .....(Mar.) 274

Membership Evidence - Certification - Evidence - Nature of inquiries made by Form 9 Declarant were such that the Form 9 was unsatisfactory - Declaration cannot be based on the assumption that a collector has carried out prior instructions or on an examination of the member-

ship cards - Recall of collector as witness to establish that each applicant for membership had personally paid a dollar not permitted - Application dismissed

ESTONIAN RELIEF COMMITTEE IN CANADA; RE S.E.I.U., LOCAL 204, AFFILIATED WITH THE S.E.I.U., A.F. OF L., C.I.O., C.L.C.; RE GROUP OF EMPLOYEES..... (May)

440

Membership Evidence - Certification - Practice and Procedure - Respondent asking Board to appoint an officer to inquire into the voluntariness of the membership evidence or order a vote because the employees do not know English - Respondent not making any allegations of wrongdoing nor asserting that any particular individual did not know what he was signing - None of the employees coming forward to oppose application - Board issuing a certificate without officer appointment or vote

ADMIRAL LINEN SUPPLY LIMITED; RE TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES, INTERNATIONAL UNION, LOCAL 351 ..... (Feb.)

90

Membership Evidence - Certification - Pre-Hearing Vote - One membership card submitted by applicant bearing no indication of the amount paid in respect of initiation fees or dues by the worker - Omission raising question about the reliability of the Form 9 declaration - Matter to be addressed at a hearing after the vote is conducted

SMITHS FALLS COMMUNITY HOSPITAL - NORTH UNIT, THE; RE INDEPENDENT CANADIAN TRANSIT UNION; RE C.U.P.E. AND GENERAL WORKERS; RE THE SMITHS FALLS COMMUNITY HOSPITAL - SOUTH UNIT ..... (Jan.)

64

Membership Evidence - Certification - Union withdrawing certification application following non-pay allegation made by employer - Union re-filing with fresh membership evidence - Employer arguing that membership evidence remained under a "cloud" and should be rejected by the Board - Board not exercising its discretion to either dismiss application or order a vote - Certificate issuing

FLO-CON CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (July)

752

Membership Evidence - Certification Where Act Contravened - Evidence - Unfair Labour Practice - Evidence of witness who was not subject to full cross-examination admissible - Surptitiously made tape-recording of a "captive" audience meeting of employees convened by an employer admissible in unfair labour practice complaint - Viva voce evidence permitted on membership cards missing dates - Threats and questioning of employees concerning the union breach of Act - Statements made at "captive" audience meeting breach of Act - Follow-up meeting not curing breaches - Discharge of employee after the union filed an unfair labour practice complaint on his behalf breach of Act - Union certified pursuant to s.8

ROYCE DUPONT POULTRY PACKERS; RE U.F.C.W., LOCAL 175, AFL-CIO-CLC; RE GROUP OF EMPLOYEES..... (May)

492

Membership Evidence - Evidence - Steelworkers Union seeking reconsideration of Board decision consenting to the early termination of a collective agreement on the grounds that, *inter alia*, the employees did not have notice of the request - Union seeking to introduce membership cards to corroborate direct evidence relating to its organizing campaign - Cards of limited probative value - Board exercising its discretion to refuse to admit the cards in evidence

GOLDCREST FURNITURE LTD.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847, AFFILIATED WITH THE TEAMSTERS UNION; RE GERARDO MERCANTE, VINCENZO REDA, FRANCO BINI AND U.S.W.A. .... (June)

604



Natural Justice - Certification - Construction Industry - Practice and Procedure - Union filing certification application on terminal date of prior application by different union - First applicant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application

M. PICKARD CONSTRUCTION CO. LTD.; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES ..... (Oct.) 1046

Natural Justice - Certification - Practice and Procedure - Security Guard - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem

MCLEAN SECURITY, 445733 ONTARIO LTD. C.O.B. AS; RE U.S.W.A. .... (Oct.) 1048

Natural Justice - Certification - Practice and Procedure - Union and employer agreeing on expanded bargaining unit to include group specifically excluded in posted notice to employees - Natural justice requiring notice to all persons possibly affected by certification - Posted notice of certification application of itself insufficient notice to group specifically excluded from unit description - Board ordering reposting with expanded bargaining unit description and extending terminal date

TRANS CONTINENTAL PRINTING INC.; RE TEAMSTERS' UNION, LOCAL 91; RE GROUP OF EMPLOYEES ..... (Nov.) 1187

Parties - Adjournment - Evidence - Jurisdictional Dispute - Practice and Procedure - Demolition association requesting permission to intervene and asking for an adjournment - Association had not filed an intervention, attended the pre-hearing conference, or retained counsel - Board denying adjournment - Merits panel to decide intervenor status issue - Board limiting the evidence of area and employer practice it will admit - Evidence limited to the demolition of similar structures in an operating environment in the province of Ontario - Statute compelling Board to inquire into work involving the same or similar type of structure in the same or similar type of environment

FOSTER WHEELER LIMITED, L.I.U.N.A., LOCAL 1089 AND; RE B.B.F., LOCAL 128 ..... (Feb.) 128

Parties - Construction Industry - Judicial Review - Practice and Procedure - Reconsideration - Termination - Termination application naming as respondents District Council and one local - International, District Council and all affiliated union locals necessary parties - Application dismissed at hearing - Board reconsidering its decision to dismiss and permitting applicants to amend the title of the application - Labourers Union bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law by failing to notify the Union that it intended to reconsider its decision and by failing to afford the Union an opportunity to make submissions - Judicial review dismissed by Divisional Court

DOUBLE S CONSTRUCTION, MICHAEL VAN LANDEGHEM, TRACY VAN LANDEGHEM AND TERRY MANZUTTI, ONTARIO LABOUR RELATIONS BOARD, 657572 ONTARIO INC., C.O.B. AS; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL, AND ITS AFFILIATED LOCAL UNIONS L.I.U.N.A., LOCALS 183 ET AL ..... (June) 696

Parties - Damages - Practice and Procedure - Reconsideration - Unfair Labour Practice - Complainants arguing that Board erred in awarding damages only to the complainants - Argument that damages should be afforded to all employees affected by the breach of the Act dismissed - A complainant must have the authority to represent the grievors' interests -

Complainants gave no indication during the proceedings that they were authorized to make a complaint on behalf of any other employees - Reconsideration application dismissed	
CUDDY FOOD PRODUCTS LTD.; RE R.W.D.S.U., AFL:CIO:CLC; RE U.F.C.W., LOCAL 175 AND U.F.C.W., AFL-CIO-CLC; RE JOHN HENSON AND 25 OTHERS; RE DEB JOHNSTON AND OTHERS ..... (Feb.)	126
Parties - Employee - Employee Reference - Applicant individual requesting a determination as to the employee status of another individual - No “question” as to employee status arising between the parties - Procedure under s.106(2) not available to the applicant - Application dismissed	
CHATELAINE VILLA NURSING HOME; RE TRACY CASTELLAN .....(Aug.)	827
Parties - Evidence - Petition - Termination - Union relying on the labour relations environment in the workplace in attacking the voluntariness of the petition to terminate the union’s bargaining rights - Board hearing evidence but finding it of no relevance - Labour relations background only of relevance in an exceptional case where there is a pattern of notorious illegal anti-union conduct by employer - Whether an employee in one unit can apply to terminate union’s bargaining rights in two other units - Board finding that applicant having status to bring applications - Votes ordered	
THOROLD I.G.A. MARKET; RE SANDRA TAYLOR; RE U.F.C.W., LOCAL 175; RE GROUP OF EMPLOYEES; RE U.F.C.W., LOCAL 633 .....(Aug.)	907
Parties - Jurisdictional Dispute - Settlement - Constituent of Carpenters’ Employers’ Bargaining Agency not entitled to be a party to the jurisdictional dispute - Whether an oral settlement of the complaint had been reached - Board finding that counter-offer made which nullified the offer of settlement - No longer any offer on the table for acceptance - No settlement - Hearings to continue	
FERANO CONSTRUCTION LIMITED, L.I.U.N.A., LOCAL 527, AND L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE C.J.A., LOCAL 2041 ..... (May)	446
Parties - Practice and Procedure - Board remaining seized to resolve disputes over Board order - Lawyer for complainant requesting hearing to deal with complainants’ unpaid legal bill - Board decision requiring union to retain counsel not effecting retainer of counsel - Lawyer not having standing to seek clarification or enforcement of Board order when acting personally and not for party to proceeding - Application dismissed	
ST. PIERRE, JEANNE; RE U.A.W., LOCAL 444 AND CHRYSLER CANADA LTD. .... (Dec.)	1251
Petition - Certification - Board reviewing system of certification in Ontario - Following petition inquiry Board finding that first seven signatures on petition were voluntary but not the rest - Remainder of signatures were obtained following a meeting with senior management where it was indicated that joining the union would put jobs at risk - Number of voluntary signatures not diminishing the support for certification to the point where the Board would order a vote - Certificate issuing	
BRIAN CHEVROLET OLDSMOBILE LTD.; RE C.A.W.; RE GROUP OF EMPLOYEES .....(Apr.)	324
Petition - Certification - Construction Industry - Employees filing documents with the Board requesting a representation vote by secret ballot - Whether the “petitions” filed are evidence of objection by the employees to the certification and, if so, whether they are voluntary expressions of desire - Working foreman who circulated the petitions testifying that the petitions were drafted so that there would be a secret ballot vote - Board finding that the preamble was not a clear statement in opposition to the union - A request for a secret ballot	

vote is not tantamount to evidence of objection - Oral evidence supporting that conclusion - Documents not voluntary in any event - Certificates issuing

ACTION ELECTRICAL LTD.; RE I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES ..... (Feb.)

79

Petition - Certification - Evidence - Board discussing the effect of an earlier petition on the voluntariness of a later petition - Circumstances surrounding the prior circulation of a petition are relevant to the voluntariness of a subsequent document but the voluntariness of the signatures on the earlier document is not a relevant question - Petition found voluntary - Vote ordered

FRAM CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (Feb.)

133

Petition - Certification - Practice and Procedure - Reconsideration - Timeliness - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely *prima facie* evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES ..... (Oct.)

1053

Petition - Evidence - Parties - Termination - Union relying on the labour relations environment in the workplace in attacking the voluntariness of the petition to terminate the union's bargaining rights - Board hearing evidence but finding it of no relevance - Labour relations background only of relevance in an exceptional case where there is a pattern of notorious illegal anti-union conduct by employer - Whether an employee in one unit can apply to terminate union's bargaining rights in two other units - Board finding that applicant having status to bring applications - Votes ordered

THOROLD I.G.A. MARKET; RE SANDRA TAYLOR; RE U.F.C.W., LOCAL 175; RE GROUP OF EMPLOYEES; RE U.F.C.W., LOCAL 633 ..... (Aug.)

907

Picketing - Construction Industry - Evidence - Judicial Review - Unfair Labour Practice - Picketing by Labourers Union found to be in breach of the Act - Purpose of picketing was to induce employers to grant bargaining rights to Labourers Union - Board granting declaratory relief to complainant Carpenters Union but not nullifying collective agreements - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board refused to permit the applicant to lead evidence going to remedy - Judicial review dismissed by Divisional Court

BAY-TOWER HOMES COMPANY LTD., BAY-TOWER MANAGEMENT INC., LEDI PROPERTIES INC., 518270 ONTARIO LIMITED, 554614 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 183, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27 ..... (June)

695

Picketing - Strike - Employees picketing during unpaid lunch breaks - Union not in a legal strike position - Picketing not designed to have any impact on the applicant's business - Picketing not in connection with nor constituting an unlawful strike - Application dismissed

ART GALLERY OF ONTARIO, THE; RE O.P.S.E.U., O.P.S.E.U., LOCAL 535, TED LOUGHEAD, ED GORLEY, RUTH JONES, CARLA ROTH, KAREN HEFFERNAN, SHARON MCGILL, ELIZABETH KHERA, MICHAEL DOUGLAS, MARY GRETA, KERRY KIM, CATHERINE SPENCE, JILL CATE, GISELA NAVIA, BUD JOHNSTON, CLAIRA HARGITAY ..... (June)

537

Practice and Procedure - Accreditation - Construction Industry - Board not compiling a Final



Schedule “F” - Schedule consists of employers for whose employees the union has bargaining rights but who have not employed any of the represented employees within the prior year - Neither the number or identity of these employers is a factor in the Board’s determination of whether the applicant should be accredited but applicant would have bargaining rights for these employers - Issue of whether these employees are bound by the accreditation order can be determined where a denial of bargaining rights arises in subsequent litigation - Unions agreeing to fulfil specific notice obligations and to waive any claim to damages in the first claim against each of these employers - Accreditation certificates issued for all employers of employees engaged in the operation of heavy equipment and truck drivers in the roads, sewers and watermain, and heavy engineering sectors in the Ottawa area

NATIONAL CAPITAL ROAD BUILDERS ASSOCIATION; RE I.U.O.E., LOCAL 793 AND TEAMSTERS, LOCAL 91; RE THE OPERATING ENGINEERS EMPLOYER BARGAINING AGENCY; RE THE LABOURERS EMPLOYER BARGAINING AGENCY .....(Jan.)

31

Practice and Procedure - Adjournment - Evidence - First Contract Arbitration - Privilege - Board ruling that evidence of discussions between a mediator or conciliation officer and one of the parties was not admissible - Discussions involving Board Officer also not admitted - Admission would undermine the settlement process and the parties had agreed that the discussions were without prejudice - Respondent seeking an adjournment to retain other counsel because its own counsel would become a witness - Impossible to finish case within 30 day time limit - Time limits in section 40a(2) are directory not mandatory - Adjournment granted

DEL EQUIPMENT LIMITED, DEL HYDRAULICS LIMITED AND EDINBURGH ELECTRIC LIMITED; RE C.A.W. AND ITS LOCAL 303 .....(Jan.)

19

Practice and Procedure - Adjournment - Evidence - Jurisdictional Dispute - Parties - Demolition association requesting permission to intervene and asking for an adjournment - Association had not filed an intervention, attended the pre-hearing conference, or retained counsel - Board denying adjournment - Merits panel to decide intervenor status issue - Board limiting the evidence of area and employer practice it will admit - Evidence limited to the demolition of similar structures in an operating environment in the province of Ontario - Statute compelling Board to inquire into work involving the same or similar type of structure in the same or similar type of environment

FOSTER WHEELER LIMITED, L.I.U.N.A., LOCAL 1089 AND; RE B.B.F., LOCAL 128 ..... (Feb.)

128

Practice and Procedure - Bargaining Unit - Certification - Construction Industry - Membership Evidence - Respondent making one non-pay allegation - Respondent suggesting the Board’s investigation of the membership evidence ought to have extended beyond the respondent’s specific allegation - Board does not conduct an investigation unless the membership evidence is irregular on its face or it receives specific particularized allegations of impropriety - Respondent not permitted to inspect membership evidence - Board satisfied with sufficiency of membership evidence and Form 80 declaration - Board rejecting argument that persons other than construction labourers should be included in labourers unit on community of interest grounds

GRANT CONSTRUCTION, DIVISION OF MALACHY GRANT AND ASSOCIATES; RE L.I.U.N.A., LOCAL 506.....(July)

766

Practice and Procedure - Certification - Ballot box ordered sealed following submissions from the union that it had not received notice of the hearing where the voluntariness of the petition had been determined - Staff of union on strike and picket line in place when notice of hearing left at union office - Union official not discovering notice until after the hearing - Board declining to reconvene hearing on the issue of the voluntariness of the petition - Failure to

read the notice until after the hearing not beyond the control of the union - Board ordering ballots counted

WOODSTOCK & DISTRICT ASSOCIATION FOR THE MENTALLY RETARDED;  
RE LONDON AND DISTRICT SERVICE WORKERS' UNION, LOCAL 220,  
S.E.I.U., A.F.L., C.I.O., C.L.C.; RE GROUP OF EMPLOYEES ..... (Feb.) 227

Practice and Procedure - Certification - Construction Industry - 4 2 = days between receipt of documents from the Registrar and the terminal date is sufficient time to respond to application - Application disposed of without hearing - Objections to certification from employer dismissed - Certificates issuing

B. MASKELL LIMITED; RE I.U.O.E., LOCAL 793 ..... (Apr.) 319

Practice and Procedure - Certification - Construction Industry - Legislation not contemplating "interim certificate" requested by union - Board practice confined to issuing decision on appropriateness of certification on interim basis - Request denied

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES ..... (Oct.) 1064

Practice and Procedure - Certification - Construction Industry - Natural Justice - Union filing certification application on terminal date of prior application by different union - First applicant arguing Board ought to set same terminal date for second applicant - Board finding no clear statutory authority to deny natural justice to second applicant by moving terminal date forward - Board declining to change later terminal date for second application

M. PICKARD CONSTRUCTION CO. LTD.; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793; RE GROUP OF EMPLOYEES ..... (Oct.) 1046

Practice and Procedure - Certification - Construction Industry - Pre-Hearing Vote - Unfair Labour Practice - Applicant union seeking to convert its certification application in which a pre-hearing vote had been requested to one in which no such vote is requested - Board denying request - Unfair labour practice complaint that employer transferred two employees out of bargaining unit to frustrate certification application - Complaint dismissed - Employees in question not permitted to vote - One ballot left to count - Ballot of single employee to be unsealed and counted unless objection received from party

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION (Sept.) 972

Practice and Procedure - Certification - Construction Industry - Respondent employer requesting hearing in construction industry certification application - Board discussing membership evidence system in Ontario and certification procedure in the construction industry - Hearing denied - Certificates issuing

WESTDALE PAINTING & DECORATING LTD.; RE P.A.T., LOCAL 205 ..... (Sept.) 984

Practice and Procedure - Certification - Employee - Evidence - Witness - Board direction to file and exchange documents on which parties intend to rely - Respondent employer concerned that it could not approach employees who may be summonsed for examination in order to obtain information and documents - No property in a witness - Proper for a party to com-

municate with any examinee before he or she begins testifying if it is for the purpose of obtaining information relevant to the proceedings

ONTARIO HYDRO; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES; RE C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000; RE THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.A. STEVENSON, AND MICHELLE MORRISSEY-O'RYAN AND GEORGE ORR ON BEHALF OF CERTAIN OBJECTING EMPLOYEES..... (Sept.)

983

Practice and Procedure - Certification - Employees on Schedule C of employee lists not at work within the 30 day period prior to the application date - Earlier application where these employees would have been included in the unit withdrawn - Employer arguing that the 30-30 rule should not be applied because the union was gerrymandering by picking an application date more than 30 days after the lay offs - No reason to decline to apply the 30-30 rule - Employees on Schedule C excluded from the lists

FLO-CON CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES ..... (June)

594

Practice and Procedure - Certification - Evidence - Related Employer - Board determining procedure for dealing with certification and related employer applications involving ten respondents - Respondent arguing that Board is without jurisdiction to adjudicate the related employer application until it has determined the applicant's right to be certified for any or all respondents - Respondents argument that it is a prerequisite to a s.1(4) declaration that there exist some bargaining rights dismissed - Board determining that related employer application should be dealt with first - Applicant's request that certain documents be produced in advance of hearing granted - Board also encouraging parties to voluntarily produce in advance documents on which they intend to rely

ATWAY TRANSPORT INC.; RE I.W.A.; RE TAIGA TRUCKING (ONTARIO) 1980 INC.; RE MENROY TRUCKING INC.; RE DEMERS & DARGY TRANSPORT INC.; RE GOSSELIN TRUCKING; RE PAUL GAGNON TRUCKING; RE J. BERNARD TRUCKING; RE CONTRACTORS CLEANUP SERVICES LIMITED; RE L.I.U.N.A., LOCAL 706; RE KOPKA TRANSPORT INC.; RE PARAMOUNT TRANSPORTATION LIMITED ..... (Feb.)

101

Practice and Procedure - Certification - Membership Evidence - Respondent asking Board to appoint an officer to inquire into the voluntariness of the membership evidence or order a vote because the employees do not know English - Respondent not making any allegations of wrongdoing nor asserting that any particular individual did not know what he was signing - None of the employees coming forward to oppose application - Board issuing a certificate without officer appointment or vote

ADMIRAL LINEN SUPPLY LIMITED; RE TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES, INTERNATIONAL UNION, LOCAL 351 ..... (Feb.)

90

Practice and Procedure - Certification - Natural Justice - Security Guard - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem

MCLEAN SECURITY, 445733 ONTARIO LTD. C.O.B. AS; RE U.S.W.A. .... (Oct.)

1048

Practice and Procedure - Certification - Natural Justice - Union and employer agreeing on expanded bargaining unit to include group specifically excluded in posted notice to employees - Natural justice requiring notice to all persons possibly affected by certification - Posted notice of certification application of itself insufficient notice to group specifically



excluded from unit description - Board ordering reposting with expanded bargaining unit description and extending terminal date

TRANS CONTINENTAL PRINTING INC.; RE TEAMSTERS' UNION, LOCAL 91;  
RE GROUP OF EMPLOYEES .....(Nov.) 1187

Practice and Procedure - Certification - Petition - Reconsideration - Timeliness - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely *prima facie* evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES ..... (Oct.) 1053

Practice and Procedure - Certification - Pre-Hearing Vote - Parties developing an alternative dispute resolution procedure to deal with 650 list challenges - Procedure submitted to the Board for its approval - Board approving of appointment of Vice-Chair under s.103(2)(h) to hear evidence and report back to the panel which will then make decisions based on the report - Rulings made by Vice-Chair are deemed to be the parties' settlements - Vice-Chair intended to be a dispute settling mechanism of "last resort"

TORONTO, GOVERNING COUNCIL OF THE UNIVERSITY OF; RE C.U.P.E.; RE GROUP OF EMPLOYEES ..... (May) 521

Practice and Procedure - Certification - Pre-Hearing Vote - Pre-hearing vote conducted and ballot box sealed - Applicant seeking leave to withdraw prior to ballots being counted - Whether a bar should be imposed on further applications by the applicant - Board making distinction between a dismissal that results from the union losing the vote and a dismissal that results from the union not having sufficient membership evidence entitling it to a vote - No bar imposed

AMARCORD CARPENTERS LTD.; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27 (FORMERLY LOCAL 1190) ..... (June) 531

Practice and Procedure - Certification - Pre-Hearing Vote - Representation Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION. (Oct.) 1050

Practice and Procedure - Certification - Pre-Hearing Vote - Representation Vote - Sole voter requesting Board not count ballot - Board already ordering counting of ballot in previous decision - Eligible voters aware of possibility of single vote beforehand in every case - Not open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation against person participating in proceeding - Board to respondent quickly to allegations of retaliation

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION. (Nov.) 1112

Practice and Procedure - Certification - Pre-Hearing Vote - Request by applicant for a pre-hearing representation vote - Board aware of a prior outstanding certification application by the applicant with respect to some or all of the same employees of the respondent - A request to withdraw the previous application had not yet been dealt with because of the issue of the imposition of a bar - Whether Board should appoint an officer to make voting arrange-

ments - Decision to delay processing the application would be inconsistency with the Board's approach to pre-hearing vote applications - Officer appointed	
U-NEED-A CAB LIMITED; RE R.W.D.S.U., AFL:CIO:CLC:.....(Mar.)	301
Practice and Procedure - Certification - Pre-Hearing Vote - Respondent refusing to post notices for employees and to provide requisite lists of employees - Respondent taking position that the application was untimely by reason of the alleged existence of a collective agreement - Persons interfering with Board instructions may be liable to punishment for contempt - Officer directed to meet with parties	
GOLDCREST FURNITURE LTD.; RE U.S.W.A.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE TEAMSTERS UNION; RE GROUP OF EMPLOYEES .....(Mar.)	245
Practice and Procedure - Certification - Pre-Hearing Vote - Trade Union Status - Applicant for certification is expected to correctly name itself - Statements of applicant's affiliations do not belong in the title portion of the certification application - Benefit of s.105 is unavailable to the applicant unless it can show that it is a continuation of one of the organizations previously found by the Board to be a trade union - Ballot box sealed - Applicant will be required to show it is a trade union	
BUTCHER ENGINEERING ENTERPRISES LIMITED, THE; RE TEAMSTERS, LOCAL UNION NO. 880..... (Feb.)	109
Practice and Procedure - Certification - Timeliness - Objectors requesting an extension of the terminal date - Board does not extend the terminal date lightly - Three full days was sufficient notice to allow employees to object to the certification - Certificate issuing	
CAREY'S RESTAURANTS (DUNDAS) INC.; RE H.E.R.E, LOCAL 75; RE GROUP OF EMPLOYEES.....(Mar.)	233
Practice and Procedure - Certification - Trade Union Status - Applicant notified that it had not been found to be a trade union under the name in which it had applied - Applicant requesting that its name on the application be amended - Board satisfied that applicant had made a <i>bona fide</i> mistake - Amendment permitted - No hearing necessary - Vote ordered	
BLUE BELL CANADA INCORPORATED; RE A.C.T.W.U.; RE GROUP OF EMPLOYEES..... (May)	412
Practice and Procedure - Certification - Trade Union Status - Respondent alleging that applicant had not proven its trade union status - Applicant arguing it was the same organization that had previously been found to be a trade union - Where any deviation in applicant's name from name Board has in its files a hearing will result - In order to benefit from presumption in s.105 an applicant must style itself in exactly the same fashion as the organization which has already been granted "status" - Board satisfied after hearing evidence that applicant could benefit from previous trade union determination - Argument that employees would be misled as to who was the true applicant dismissed	
HUMPTY DUMPTY FOODS LIMITED; RE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647; RE THE RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS' UNION, LOCAL 461 OF THE R.W.D.S.U., AFL:CIO:CLC: ..... (Feb.)	147
Practice and Procedure - Change in Working Conditions - Discharge - Evidence - Interference in Trade Unions - Remedies - Unfair Labour Practice - Board taking into account findings of fact made by another panel with respect to issues put squarely before that panel in another proceeding involving the same parties - Respondent employer not appearing at hearing and therefore failing to discharge burden of proof - Multiple breaches of Act - Respondent not providing conduct money to witnesses it had summonsed and who had attended - Employ-	

er's actions may constitute unfair labour practice but Board has other means of enforcing the payment of conduct money - Board ordering that conduct money be paid and posting - Board declining to award costs

HAMILTON AUTOMATIC VENDING COMPANY LIMITED; RE CEMENT, LIME, GYPSUM AND ALLIED WORKERS DIVISION OF THE B.B.F. AND ITS LOCAL 576 .....(Mar.)

248

Practice and Procedure - Conciliation - Reference - Trade Union - Trade Union Status - Union Successor Status - Objecting employees permitted to participate in Ministerial reference - Two union locals taking steps to merge - Whether "predecessor" local still in existence so as to be entitled to request a conciliation officer - Board discussing trade union reorganizations - Board finding that union local still existed as a trade union at the time it requested a conciliation officer

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Feb.)

149

Practice and Procedure - Construction Industry - Construction Industry Grievance - Duty of Fair Representation - Unfair Labour Practice - Union filing a grievance with the Board alleging that the employer had repeatedly breached the collective agreement - Union considered the litigation to be long, costly and unpredictable - Grievance settled prior to hearing following ratification by a majority of the bargaining unit members - Complainants considering terms of settlement unsatisfactory - Delay of 13 months before filing fair representation complaint - Board declining to inquire further into complaint on the basis of numerous policy considerations - Complaint dismissed

CARTER, MARK AND BRAD CARTER; RE S.M.W., LOCAL 539; RE IMPERIAL INSULATION & ROOFING (1982) LIMITED ..... (Feb.)

112

Practice and Procedure - Construction Industry - Judicial Review - Parties - Reconsideration - Termination - Termination application naming as respondents District Council and one local - International, District Council and all affiliated union locals necessary parties - Application dismissed at hearing - Board reconsidering its decision to dismiss and permitting applicants to amend the title of the application - Labourers Union bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law by failing to notify the Union that it intended to reconsider its decision and by failing to afford the Union an opportunity to make submissions - Judicial review dismissed by Divisional Court

DOUBLE S CONSTRUCTION, MICHAEL VAN LANDEGHEM, TRACY VAN LANDEGHEM AND TERRY MANZUTTI, ONTARIO LABOUR RELATIONS BOARD, 657572 ONTARIO INC., C.O.B. AS; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL, AND ITS AFFILIATED LOCAL UNIONS L.I.U.N.A., LOCALS 183 ET AL..... (June)

696

Practice and Procedure - Construction Industry - Judicial Review - Unfair Labour Practice - Complaint by Carpenters Union that Labourers Union negotiated collective agreements which contained subcontracting clauses requiring home builders to subcontract work to contractors in contractual relations with Labourers Union notwithstanding that the Union did not represent any of the employees employed by the home builders - Board declining to inquire into complaint due to delay in bringing matter on for hearing - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board wrongfully declined to exercise its jurisdiction and failed to observe the rules of natural justice in refusing to



inquire into the complaint - Judicial review dismissed by Divisional Court - Application by Carpenters Union for leave to appeal to the Court of Appeal dismissed

DELLBROOK HOMES, L.I.U.N.A., LOCAL 183, THE TORONTO HOUSING LABOUR BUREAU, PHILMOR DEVELOPMENTS LIMITED, MOR-ALICE CONSTRUCTION LIMITED, GREENPARK HOMES, HERON HOMES, BRAMALEA LIMITED, VICTORIA WOOD DEVELOPMENT CORPORATION INC., MICHAEL REILLY, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27.....(July)

823

Practice and Procedure - Construction Industry - Jurisdictional Dispute - Work in dispute involving the application of aluminum cladding or lagging over insulation applied to oven circulation ducts - Sheet Metal Union arguing that it would be unlawful for the Board to assign the work in dispute to persons who are not journeymen or apprentice sheet metal workers - *Apprenticeship Act* not stipulating that certain work can only be done by certain people - Board not prepared to find as a preliminary matter that the work could be done lawfully only by journeymen or apprentice sheet metal workers

E. S. FOX LIMITED, PRO INSUL LIMITED, S.M.W., LOCAL 562; RE H.F.I.A., LOCAL 95; RE ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE; RE ONTARIO SHEET METAL AND AIR HANDLING GROUP; RE MASTER INSULATORS' ASSOCIATION OF ONTARIO INC. ....(July)

738

Practice and Procedure - Construction Industry - Related Employer - Employer filing related employer application in support of its request that the Board reconsider its decision to certify the Carpenters Union - Employer arguing certificate should be revoked because the Labourers Union holds the bargaining rights through its relationship with the related employers - Employer seeking leave to withdraw its related employer application after the release of *Ellis-Don* - Carpenters Union opposing request and asking that Board deal with application on its merits or treat employer's application as if it were the Carpenters' application - Board refusing employer leave to withdraw its application - Application to be heard on its merits

TACTIX CONSTRUCTION LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183 .....(Aug.)

903

Practice and Procedure - Counsel for the respondent asking the Board to rule on two "preliminary" matters - Board not obliged to deal in a "preliminary" manner with any issue - Respondent's arguments can be raised before the panel that hears the merits of the applications

INNOPAC INC. PURITY PACKAGING, PROGRESSIVE PACKAGING LIMITED, CONDOR LAMINATIONS; RE TORONTO TYPOGRAPHICAL UNION, NUMBER 91, PRINTING PUBLISHING AND MEDIA WORKERS SECTOR OF THE COMMUNICATIONS WORKERS OF NORTH AMERICA.....(June)

608

Practice and Procedure - Damages - Parties - Reconsideration - Unfair Labour Practice - Complainants arguing that Board erred in awarding damages only to the complainants - Argument that damages should be afforded to all employees affected by the breach of the Act dismissed - A complainant must have the authority to represent the grievors' interests - Complainants gave no indication during the proceedings that they were authorized to make a complaint on behalf of any other employees - Reconsideration application dismissed

CUDDY FOOD PRODUCTS LTD.; RE R.W.D.S.U., AFL:CIO:CLC; RE U.F.C.W., LOCAL 175 AND U.F.C.W., AFL-CIO-CLC; RE JOHN HENSON AND 25 OTHERS; RE DEB JOHNSTON AND OTHERS .....(Feb.)

126

Practice and Procedure - Duty of Fair Representation - Evidence - Health and Safety - Unfair Labour Practice - Complainant fired for engaging in an illegal work stoppage - Discharge

upheld by arbitrator - Complainant alleging he brought concern to union prior to arbitration that he was fired because he was the safety representative and that concern was not pursued - Respondent employer arguing that OHSA complaint should be dismissed because the complainant had elected to proceed by way of arbitration - OHSA complaint dismissed - Election made where the discipline of a worker has been litigated at arbitration - Fair representation complaint to proceed

ZALEV BROTHERS LIMITED; RE ROBERT MCINTYRE; RE U.S.W.A., LOCAL 14045 ..... (July)

810

Practice and Procedure - Duty of Fair Representation - Evidence - Unfair Labour Practice - Complainant alleging union did not represent him properly in having his seniority reinstated - Union moving for non-suit after complainant completing his evidence - Employer not joining in non-suit - Union submitting it should not be put to its election to call evidence - Putting union to its election would be futile because the employer could still call evidence - Board refusing to entertain non-suit motion - Complaint dismissed

BALKOS, PAUL; RE LAWSON PACKAGING TORONTO, A DIVISION OF THE LAWSON MARDON GROUP LIMITED AND G.C.I.U., LOCAL 500M ..... (Sept.)

932

Practice and Procedure - Employee reference - Board outlining information to be filed in employee reference and Board procedure

HOTEL DIEU OF ST. JOSEPH'S HOSPITAL OF WINDSOR; RE O.N.A. .... (Dec.)

1221

Practice and Procedure - Employee Reference - Evidence - Whether persons holding the position of "nurse manager, shift/weekend" are employees - Board asked to reassess its practice of using the application date as the evidentiary cut-off - Date of actual commencement of the examination of the first witness selected where it is a newly-created position - Broader question of whether examination date should be the cut-off point for all s.106(2) applications not addressed - Persons in this classification not employees within the meaning of the Act

WHITBY GENERAL HOSPITAL; RE O.N.A. .... (June)

664

Practice and Procedure - Evidence - Company bringing non-suit once intervener union had introduced its evidence - Incumbent union concurring in the request to dismiss the application - Whether parties should be put to their election as to whether or not they wish to call evidence - Board discussing non-suit procedure where there are three parties to a proceeding and two bring a non-suit - Parties put to their election

GOLDCREST FURNITURE LTD.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847, AFFILIATED WITH THE TEAMSTERS UNION; RE GERARDO MERCANTE, VINCENZO REDA, FRANCO BINI AND THE U.S.W.A. .... (Sept.)

967

Practice and Procedure - Evidence - First Contract Arbitration - Respondent objecting to the Board receiving a supplementary statement of material facts filed outside time limits in Practice Note - Board not granting leave to applicant to adduce evidence relating to the new allegations in its supplementary statement

PHILIPS AIR DISTRIBUTION LTD., LAU DIVISION -; RE C.A.W. .... (June)

642

Practice and Procedure - Evidence - Jurisdictional Dispute - Complainant failing to comply with the Board's rules and practice note concerning filings - Respondents objecting to the introduction of two documents and any evidence of area practice - Board not allowing evidence in - Complaint involving the transportation of heavy equipment on float trucks - Criteria and delay of 10 years favouring status quo - Complaint dismissed

SPRUCE FALLS POWER AND PAPER COMPANY LIMITED, C.P.U., LOCAL 89, AND; RE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 ..... (June)

645

Practice and Procedure - Evidence - Jurisdictional Dispute - Jurisdictional dispute over the electrical instrumentation systems in a paper mill - Board authorizing a Vice-Chair to inquire into the complaint pursuant to s.103(2)(h) following the death of one of the Board members - Respondent bringing motion for non-suit following the completion of the complainant's case - Non-suit succeeding and complaint dismissed - Complainant not having produced evidence that might even arguably lead the Board to grant its claim in whole or in part	
BOISE CASCADE CANADA LTD., AND I.B.E.W., LOCAL 1744; RE I.A.M., LODGE 771.....	413
Practice and Procedure - Judicial Review - Unfair Labour Practice - Complaint by Carpenters Union that Labourers Union negotiated collective agreements which contained subcontracting clauses requiring home builders to subcontract work to contractors in contractual relations with Labourers Union notwithstanding that the Union did not represent any of the employees employed by the home builders - Board declining to inquire into complaint due to delay in bringing matter on for hearing - Carpenters Union bringing application for judicial review on the grounds that, <i>inter alia</i> , the Board wrongfully declined to exercise its jurisdiction and failed to observe the rules of natural justice in refusing to inquire into the complaint - Judicial review dismissed by Divisional Court	
DELLBROOK HOMES, THE TORONTO HOUSING LABOUR BUREAU, PHILMOR DEVELOPMENTS LIMITED, MOR-ALICE CONSTRUCTION LIMITED, GREENPARK HOMES, HERON HOMES, BRAMALEA LIMITED, VICTORIA WOOD DEVELOPMENT CORPORATION INC., TWO STAR CONSTRUCTION LTD., MICHAEL REILLY, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183.....	315
Practice and Procedure - Jurisdictional Dispute - Sector Determination - Whether work in dispute falls within ICI sector - Project involving the construction of a passenger terminal building at the airport - Specific work in dispute involving the departures level bridge - Board setting out its reasons for directing that notice of the s.150 proceeding be given to any person having a direct connection with the Terminal 3 site project - Decision in a s.150 proceeding has province-wide application if work characteristics are to determine whether the work falls within a particular sector - Notice should be given to the widest practical constituency	
DUFFERIN CONSTRUCTION COMPANY; RE C.J.A., LOCAL 27; RE THE FOUNDATION COMPANY OF CANADA LIMITED; RE L.I.U.N.A., LOCAL 183; RE DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF ST. LAWRENCE CEMENT INC. ....	25
Practice and Procedure - Parties - Board remaining seized to resolve disputes over Board order - Lawyer for complainant requesting hearing to deal with complainants' unpaid legal bill - Board decision requiring union to retain counsel not effecting retainer of counsel - Lawyer not having standing to seek clarification or enforcement of Board order when acting personally and not for party to proceeding - Application dismissed	
ST. PIERRE, JEANNE; RE U.A.W., LOCAL 444 AND CHRYSLER CANADA LTD. ....	1251
Practice and Procedure - Remedies - Unfair Labour Practice - Complainant attempting in a letter to the Board following the conclusion of the hearing to expand the proceedings to litigate a matter not previously understood by the parties nor the Board to be an issue - No useful purpose would be served by inquiring into matter because matter complained of had been fully remedied - Complaint dismissed	
GUDELJ, MR. IVAN; RE G.M.P.; RE CANRON INC.....	850
Practice and Procedure - Remedies - Union notifying Board that its remedial order had not been	



complied with and requesting that Board file the order in court - Board reviewing its procedures for dealing with allegations of non-compliance - Act not requiring a hearing where the fact of non-compliance is not put in issue - Order filed in court

CONRAD HEATING CO. AND JOE CONRAD; RE S.M.W., LOCAL 47..... (May) 437

Practice and Procedure - Witness - Board reviewing authority for enforcing attendance of witnesses - Board issuing arrest warrant for previously subpoenaed material witness who failed to attend

KING GLASS LIMITED/KING GLASS; RE P.A.T., LOCAL 1795 -GLAZIERS..(Dec.) 1223

Practice and Procedure - Witness - Party calling witness responsible for providing Board with correct name and address for arrest warrant

REAL CARPENTERS; RE C.J.A., LOCAL 27 ..... (Dec.) 1250

Pre-Hearing Vote - Bargaining Unit - Certification - Related Employer - Union seeking to represent a unit of drivers and owner-operators working "under the banner" of the respondent airline limousine companies - Three of named respondents declared one employer - Request to exclude part-time employees and students rejected - Allegations of voting day and membership irregularities dismissed - Board not ruling on the merits of the argument that non-driving brokers should be declared one employer with the named respondents - Certificates issuing

AIRLINE LIMOUSINE SERVICES LIMITED, MCDONNELL-RONALD LIMOUSINE SERVICE LIMITED OPERATING AS; RE TEAMSTERS UNION, LOCAL 938; RE MCINTOSH LIMOUSINE SERVICE LIMITED; RE AIRLIFT LIMOUSINE SERVICES LIMITED; RE AIR CAB LIMOUSINE SERVICES (1985) LIMITED; RE AAROPORT LIMOUSINE SERVICES LTD. .... (May) 395

Pre-Hearing Vote - Certification - Construction Industry - Practice and Procedure - Unfair Labour Practice - Applicant union seeking to convert its certification application in which a pre-hearing vote had been requested to one in which no such vote is requested - Board denying request - Unfair labour practice complaint that employer transferred two employees out of bargaining unit to frustrate certification application - Complaint dismissed - Employees in question not permitted to vote - One ballot left to count - Ballot of single employee to be unsealed and counted unless objection received from party

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION (Sept.) 972

Pre-Hearing Vote - Certification - Construction Industry - Respondent failing to meet with officer to make voting arrangements or to file any lists of employees - Intervener arguing that the list should not be finalized in the absence of the respondent and the respondent's records - Board refusing to convene a hearing on the issue - Vote ordered on the basis of the records of the applicant and available information - Ballot box sealed

VICTOR CARPENTRY LIMITED; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27..... (May) 524

Pre-Hearing Vote - Certification - Interference in Trade Unions - Intimidation and Coercion - Applicant union claiming that pamphlets and cartoons distributed to employees by the incumbent union at the "11th" hour was so misleading as to warrant a second vote - Board reluctant to interfere in union election campaigns - Applicant union called no evidence indicating that the statements were false - Reasonable employees would see the material as propaganda in any event - No reason to believe the material would impair the employees' freedom to vote as they considered appropriate - Vote ordered counted

TRIDON LIMITED; RE C.A.W.; RE TRIDON EMPLOYEES' UNION.....(Mar.) 295

Pre-Hearing Vote - Certification - Membership Evidence - One membership card submitted by applicant bearing no indication of the amount paid in respect of initiation fees or dues by the worker - Omission raising question about the reliability of the Form 9 declaration - Matter to be addressed at a hearing after the vote is conducted	
SMITHS FALLS COMMUNITY HOSPITAL - NORTH UNIT, THE; RE INDEPENDENT CANADIAN TRANSIT UNION; RE C.U.P.E. AND GENERAL WORKERS; RE THE SMITHS FALLS COMMUNITY HOSPITAL - SOUTH UNIT .....(Jan.)	64
Pre-Hearing Vote - Certification - Practice and Procedure - Parties developing an alternative dispute resolution procedure to deal with 650 list challenges - Procedure submitted to the Board for its approval - Board approving of appointment of Vice-Chair under s.103(2)(h) to hear evidence and report back to the panel which will then make decisions based on the report - Rulings made by Vice-Chair are deemed to be the parties' settlements - Vice-Chair intended to be a dispute settling mechanism of "last resort"	
TORONTO, GOVERNING COUNCIL OF THE UNIVERSITY OF; RE C.U.P.E.; RE GROUP OF EMPLOYEES ..... (May)	521
Pre-Hearing Vote - Certification - Practice and Procedure - Pre-hearing vote conducted and ballot box sealed - Applicant seeking leave to withdraw prior to ballots being counted - Whether a bar should be imposed on further applications by the applicant - Board making distinction between a dismissal that results from the union losing the vote and a dismissal that results from the union not having sufficient membership evidence entitling it to a vote - No bar imposed	
AMARCORD CARPENTERS LTD.; RE L.I.U.N.A., LOCAL 183; RE C.J.A., LOCAL 27 (FORMERLY LOCAL 1190) ..... (June)	531
Pre-Hearing Vote - Certification - Practice and Procedure - Representation Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot	
MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION. (Oct.)	1050
Pre-Hearing Vote - Certification - Practice and Procedure - Request by applicant for a pre-hearing representation vote - Board aware of a prior outstanding certification application by the applicant with respect to some or all of the same employees of the respondent - A request to withdraw the previous application had not yet been dealt with because of the issue of the imposition of a bar - Whether Board should appoint an officer to make voting arrangements - Decision to delay processing the application would be inconsistency with the Board's approach to pre-hearing vote applications - Officer appointed	
U-NEED-A CAB LIMITED; RE R.W.D.S.U., AFL:CIO:CLC:.....(Mar.)	301
Pre-Hearing Vote - Certification - Practice and Procedure - Respondent refusing to post notices for employees and to provide requisite lists of employees - Respondent taking position that the application was untimely by reason of the alleged existence of a collective agreement - Persons interfering with Board instructions may be liable to punishment for contempt - Officer directed to meet with parties	
GOLDCREST FURNITURE LTD.; RE U.S.W.A.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE TEAMSTERS UNION; RE GROUP OF EMPLOYEES .....(Mar.)	245
Pre-Hearing Vote - Certification - Practice and Procedure - Trade Union Status - Applicant for certification is expected to correctly name itself - Statements of applicant's affiliations do not belong in the title portion of the certification application - Benefit of s.105 is unavailable	

able to the applicant unless it can show that it is a continuation of one of the organizations previously found by the Board to be a trade union - Ballot box sealed - Applicant will be required to show it is a trade union

BUTCHER ENGINEERING ENTERPRISES LIMITED, THE; RE TEAMSTERS, LOCAL UNION NO. 880 ..... (Feb.)

109

Pre-Hearing Vote - Certification - School Boards and Teachers Collective Negotiations Act - *Ottawa-Carleton French-Language School Board Act, 1988* setting up a distinct school board for French-language education in the Ottawa area - Applicant applying to be certified for occasional teachers and part-time supply instructors employed by the respondent - Respondent arguing that it is not the employer - Board examining scheme of Act - Pre-hearing vote ordered - Outstanding issues to be addressed at hearing following vote

CONSEIL SCOLAIRE DE LANGUE FRANC

AISE D'OTTAWA-CARLETON (SECTION CATHOLIQUE); RE ASSOCIATION DES ENSEIGNANTES ET DES ENSEIGNANTS SUPPLEu"ANTS D'OTTAWA-CARLETON Eu"LEu"MENTAIRE SEu"PAREu"E..... (June)

575

Pre-Hearing Vote - Certification - Timeliness - Respondent and intervener arguing that pre-hearing vote should not be ordered because the application was untimely - Applicant asking that Board set aside earlier decision giving consent to early termination of collective agreement due to lack of notice to employees and fraud - Collective agreement would not bar application if Board retroactively revokes its consent to the early termination - Vote ordered - Ballot box sealed

GOLDCREST FURNITURE LTD.; RE U.S.W.A.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE TEAMSTERS UNION; RE GROUP OF EMPLOYEES ..... (Apr.)

355

Pre-Hearing Vote - Certification - Trade Union - Trade Union Status - Whether application barred due to six month bar in place against another local of the same union - Pre-hearing vote ordered but ballot box sealed - Issue of trade union status of applicant to be dealt with at the hearing to be scheduled to hear the merits of entertaining the application

GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS UNION, LOCAL 938; RE THE ASSOCIATION OF MUNICIPAL EMPLOYEES (Apr.)

352

Pre-Hearing Vote - Practice and Procedure - Certification - Representation Vote - Sole voter requesting Board not count ballot - Board already ordering counting of ballot in previous decision - Eligible voters aware of possibility of single vote beforehand in every case - Not open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation against person participating in proceeding - Board to respondent quickly to allegations of retaliation

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION. (Nov.)

1112

Privilege - Adjournment - Evidence - First Contract Arbitration - Practice and Procedure - Board ruling that evidence of discussions between a mediator or conciliation officer and one of the parties was not admissible - Discussions involving Board Officer also not admitted - Admission would undermine the settlement process and the parties had agreed that the discussions were without prejudice - Respondent seeking an adjournment to retain other counsel because its own counsel would become a witness - Impossible to finish case within 30 day time limit - Time limits in section 40a(2) are directory not mandatory - Adjournment granted

DEL EQUIPMENT LIMITED, DEL HYDRAULICS LIMITED AND EDINBURGH ELECTRIC LIMITED; RE C.A.W. AND ITS LOCAL 303 ..... (Jan.)

19



Ratification and Strike Vote - Duty of Fair Representation - Unfair Labour Practice - Complainant occasional teacher failing to obtain a permanent teaching position and failing to obtain assignments as an occasional teacher - Employer denying complainant access to his complete personnel file - Whether union's failure to pursue grievance constituted a breach of fair representation duty - Whether the notice of union meetings violated the Act - Complaint dismissed - Complainant failing to show he had any entitlement to jobs or his file ROCCA, PETER; RE ONTARIO CATHOLIC OCCASIONAL TEACHERS ASSOCIATION; RE METROPOLITAN SEPARATE SCHOOL BOARD .....(Apr.)	371
Reconsideration - Bargaining Rights - Certification - First Contract Arbitration - Trade Union Status - Applicant seeking to amend its name - Board permitting name to be amended - No prejudice to respondent - First contract application adjourned sine die pending the disposition of the union's request for reconsideration in a certification matter KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 .....(Aug.)	852
Reconsideration - Bargaining Unit - Certification - Construction Industry - Request that Board reconsider its interpretation of the MTABA collective agreement and its decision to allow the Carpenters Union to carve out its craft from the concrete forming agreement - Reconsideration dismissed ELLIS-DON LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE THE FORM WORK COUNCIL OF ONTARIO; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION; RE MILNE & NICHOLLS LTD.; RE MOLLENHAUER LIMITED .....(Mar.)	234
Reconsideration - Bargaining Unit - Certification - Dependent Contractor - Board certifying union for two units, one of owner operators/dependent contractors and the other of drivers - Board declining to reconsider its decision HAMILTON YELLOW CAB COMPANY LIMITED, FLEET TAXI, YELLOW TAXI, TRANSPORTATION UNLIMITED INC., D. J. VAN BOORT ET AL; RE R.W.D.S.U., AFL-CIO-CLC .....(Feb.)	144
Reconsideration - Bargaining Unit - Certification - Union and employer requesting that Board amend the street address on the certificate to reflect a change in location - No employee raising an objection - No intervening collective agreement - Board agreeing to request in these narrow and unique circumstances NATIONAL TRUST; RE UNION OF BANK EMPLOYEES (ONTARIO), LOCAL 2104, CANADIAN LABOUR CONGRESS; RE JANEEN G. SNARE.....(Apr.)	369
Reconsideration - Certification - Construction Industry - Employer Support - Fraud - Employee requesting Board reconsider its decision to certify the union - Allegations that union received employer support and certificate obtained by fraud - Cogent evidence pointing to possible violation of s.13 sufficient ground for reconsideration - Delay of 13 months in making reconsideration request is a factor in considering whether to vary or revoke the decision WALLCRAFT PAINTING AND DECORATING LTD.; RE P.A.T., LOCAL 557(Mar.)	306
Reconsideration - Certification - Petition - Practice and Procedure - Timeliness - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely <i>prima facie</i> evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES.....(Oct.)	1064

Reconsideration - Construction Industry - Judicial Review - Parties - Practice and Procedure - Termination - Termination application naming as respondents District Council and one local - International, District Council and all affiliated union locals necessary parties - Application dismissed at hearing - Board reconsidering its decision to dismiss and permitting applicants to amend the title of the application - Labourers Union bringing application for judicial review on the grounds that, <i>inter alia</i> , the Board erred in law by failing to notify the Union that it intended to reconsider its decision and by failing to afford the Union an opportunity to make submissions - Judicial review dismissed by Divisional Court	
DOUBLE S CONSTRUCTION, MICHAEL VAN LANDEGHEM, TRACY VAN LANDEGHEM AND TERRY MANZUTTI, ONTARIO LABOUR RELATIONS BOARD, 657572 ONTARIO INC., C.O.B. AS; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL, AND ITS AFFILIATED LOCAL UNIONS L.I.U.N.A., LOCALS 183 ET AL..... (June)	696
Reconsideration - Damages - Parties - Practice and Procedure - Unfair Labour Practice - Complainants arguing that Board erred in awarding damages only to the complainants - Argument that damages should be afforded to all employees affected by the breach of the Act dismissed - A complainant must have the authority to represent the grievors' interests - Complainants gave no indication during the proceedings that they were authorized to make a complaint on behalf of any other employees - Reconsideration application dismissed	
CUDDY FOOD PRODUCTS LTD.; RE R.W.D.S.U., AFL-CIO-CLC; RE U.F.C.W., LOCAL 175 AND U.F.C.W., AFL-CIO-CLC; RE JOHN HENSON AND 25 OTHERS; RE DEB JOHNSTON AND OTHERS ..... (Feb.)	26
Reconsideration - Evidence - Jurisdictional Dispute - Request by respondent Labourers Union that Board reconsider its ruling to limit evidence of area practice to the demolition of similar structures in an operating environment in the province - Alleged denial of natural justice on the grounds of insufficient notice to parties and predetermination of issues of relevance and weight of evidence - Reconsideration denied - Parties who choose not to prepare themselves to deal with issues raised during a pre-hearing conference do so at their own peril	
FOSTER WHEELER LIMITED, L.I.U.N.A., LOCAL 1089 AND; RE B.B.F., LOCAL 128 ..... (May)	451
Reconsideration - Intimidation and Coercion - Remedies - Complainant requesting reconsideration on ground Board failed to make decision on merits - Board not required to decide on merits where lack of appropriate remedy makes issue moot - Board having discretion to inquire into section 89 complaint - Application dismissed	
CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U..... (Dec.)	1218
Reference - Conciliation - Practice and Procedure - Trade Union - Trade Union Status - Union Successor Status - Objecting employees permitted to participate in Ministerial reference - Two union locals taking steps to merge - Whether "predecessor" local still in existence so as to be entitled to request a conciliation officer - Board discussing trade union reorganizations - Board finding that union local still existed as a trade union at the time it requested a conciliation officer	
KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Feb.)	149
Related Employer - Bargaining Unit - Certification - Pre-Hearing Vote - Union seeking to represent a unit of drivers and owner-operators working "under the banner" of the respondent airline limousine companies - Three of named respondents declared one employer - Request to exclude part-time employees and students rejected - Allegations of voting day and membership irregularities dismissed - Board not ruling on the merits of the argument	

that non-driving brokers should be declared one employer with the named respondents -  
Certificates issuing

AIRLINE LIMOUSINE SERVICES LIMITED, MCDONNELL-RONALD LIMOUSINE SERVICE LIMITED OPERATING AS; RE TEAMSTERS UNION, LOCAL 938; RE MCINTOSH LIMOUSINE SERVICE LIMITED; RE AIRLIFT LIMOUSINE SERVICES LIMITED; RE AIR CAB LIMOUSINE SERVICES (1985) LIMITED; RE AAROPORT LIMOUSINE SERVICES LTD. .... (May)

395

Related Employer - Certification - Construction Industry - Labourers Union seeking in its certification application to have the respondent companies declared one employer - Bricklayers Union intervening in certification and filing its own related employer application - Whether Board will exercise its discretion to declare respondents one employer - Board dismissing Bricklayers' application because union did not act promptly but making one employer declaration in the Labourers application - Certification application scheduled for further hearing

GOTTCON CONTRACTORS LIMITED, GOTTARDO PROPERTIES (DOME) INC., GOTTARDO PROPERTIES LIMITED, GOTTARDO CONTRACTING (1980) INC., GOTTARDO CONTRACTING CO. LIMITED, GOTTARDO HOLDINGS COMPANY LTD., GOTTARDO MANAGEMENT LIMITED AND GOTTARDO CORPORATION; RE L.I.U.N.A., LOCAL 506; RE B.M.I.U., LOCAL 1 ..... (July)

757

Related Employer - Certification - Evidence - Practice and Procedure - Board determining procedure for dealing with certification and related employer applications involving ten respondents - Respondent arguing that Board is without jurisdiction to adjudicate the related employer application until it has determined the applicant's right to be certified for any or all respondents - Respondents argument that it is a prerequisite to a s.1(4) declaration that there exist some bargaining rights dismissed - Board determining that related employer application should be dealt with first - Applicant's request that certain documents be produced in advance of hearing granted - Board also encouraging parties to voluntarily produce in advance documents on which they intend to rely

ATWAY TRANSPORT INC.; RE I.W.A.; RE TAIGA TRUCKING (ONTARIO) 1980 INC.; RE MENROY TRUCKING INC.; RE DEMERS & DARGY TRANSPORT INC.; RE GOSSELIN TRUCKING; RE PAUL GAGNON TRUCKING; RE J. BERNARD TRUCKING; RE CONTRACTORS CLEANUP SERVICES LIMITED; RE L.I.U.N.A., LOCAL 706; RE KOPKA TRANSPORT INC.; RE PARAMOUNT TRANSPORTATION LIMITED ..... (Feb.)

101

Related Employer - Construction Industry - Bricklayers Union alleging that City and Library Board were under common control or direction - Library Board established by statute in 1950 - Union members not used by Library Board when it constructed a library - Whether Board ought to exercise its discretion in favour of making a common employer declaration - Operations of two entities not integrated - Labour relations community treating similar entities as separate employers - Board dismissing application - Circumstances not warranting common employer declaration

ETOBICOKE PUBLIC LIBRARY BOARD, THE CORPORATION OF THE CITY OF, THE CORPORATION OF THE CITY OF ETOBICOKE; RE B.A.C., LOCAL 2 ..... (Sept.)

935

Related Employer - Construction Industry - Main business of each of the respondents differed but companies used interchangeably - Construction industry activities of the companies had a common meeting ground in sheet metal work and sandblasting and painting - Board finding that respondents carried on associated or related activities or businesses - Board rejecting



argument that s.1(4) requires the entities to exist in law contemporaneously - Respondents found to be one employer

WARREN STEEPLEJACKS LIMITED, WARREN MECHANICAL LIMITED, BLASTCO CORPORATION; RE S.M.W., LOCAL 537 .....(Mar.)

309

Related Employer - Construction Industry - One corporation performing concrete work on a bid basis primarily for the construction industry - Other corporation engaged in a much broader scope of work - Most of its work underground but it also does concrete work - One employer declaration made

STEBILL LIMITED, HEMMIN MINE SERVICE LIMITED; RE L.I.U.N.A., LOCAL 607 .....(Apr.)

384

Related Employer - Construction Industry - Practice and Procedure - Employer filing related employer application in support of its request that the Board reconsider its decision to certify the Carpenters Union - Employer arguing certificate should be revoked because the Labourers Union holds the bargaining rights through its relationship with the related employers - Employer seeking leave to withdraw its related employer application after the release of *Ellis-Don* - Carpenters Union opposing request and asking that Board deal with application on its merits or treat employer's application as if it were the Carpenters' application - Board refusing employer leave to withdraw its application - Application to be heard on its merits

TACTIX CONSTRUCTION LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183 .....(Aug.)

903

Related Employer - Construction Industry - Remedies - Sole officer and shareholder of Green-King Ltd. is the construction manager of Widcor Ltd. - Nothing in common between the two general contractors except the individual - Widcor Ltd. winding down its construction business and going into land development - Widcor Ltd. using the construction services of Green-King Ltd. to construct a car dealership - Board finding sufficient common direction and control to make one employer declaration but declaration limited to protecting the union's bargaining rights to those instances where Green-King Ltd. and Widcor Ltd. together engage in working in the construction industry

WIDCOR LIMITED AND GREEN-KING LTD.; RE C.J.A., LOCAL 27 .....(Jan.)

66

Related Employer - Duty to Bargain in Good Faith - Employer - Unfair Labour Practice - Life insurance company contracting out cleaning services - No common control or direction between the company and the cleaning contractor - Related employer application dismissed - Argument that life insurance company was the true employer of the workers performing the cleaning work dismissed - Complaint that cleaning contractor and life insurance company conspired to get rid of the unionized cleaners dismissed - Complaint against life insurance company that it was motivated by anti-union considerations dismissed - Complaint that company failed to disclose during collective bargaining its decision to contract out the cleaning services dismissed

METROPOLITAN LIFE INSURANCE COMPANY; RE I.U.O.E., LOCAL 796; RE ALLEN MAINTENANCE LTD. ....(Feb.)

175

Related Employer - Judicial Review - Unfair Labour Practice - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, *inter alia*, the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court

G.P. CONSTRUCTION, 556631 ONTARIO LIMITED, C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD .....(June)

696

Related Employer - Judicial Review - Unfair Labour Practice - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, <i>inter alia</i> , the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court - Application for leave to appeal to the Court of Appeal dismissed	
G.P. CONSTRUCTION, 556631 ONTARIO LIMITED C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD ..... (Oct.)	1092
Related Employer - Sale of a Business - Union seeking declaration of company's status as successor employer - Sole proprietor signing Working Agreement - Proprietorship business and assets subsequently sold to corporation - Both events transpiring before enactment of sale of business and related employer provisions - Sale of business and related employer provisions neither retroactive nor retrospective - Application dismissed	
W.G. GALLAGHER CONSTRUCTION LIMITED; RE THE ONTARIO COUNCIL OF P.A.T.; RE P.A.T., DISTRICT COUNCIL 46; RE W.G. GALLAGHER CONSTRUCTION CO. AND W.G. GALLAGHER CONSTRUCTION LIMITED ..... (Nov.)	1191
Related Employer - Union seeking declaration that the Ontario Legal Aid Plan is a common employer with three community legal clinics - Clinics independent of OLAP but are funded by it and are accountable for the proper use of public funds - OLAP found to be engaged in related activities - Common control criteria met because OLAP influenced the management of the clinics - Board exercising discretion to make one employer declaration with respect to two clinics where OLAP had so involved itself in the affairs of the clinics that to ensure meaningful collective bargaining the union needed to be able to negotiate with OLAP	
ONTARIO LEGAL AID PLAN, THE, UNDER THE ADMINISTRATION OF THE LAW SOCIETY OF UPPER CANADA & COMMUNITY LEGAL EDUCATION ONTARIO; RE O.P.S.E.U.; RE THE ONTARIO ASSOCIATION OF LEGAL CLINICS ("OALC") AND YORK COMMUNITY; RE COMMUNITY LEGAL EDUCATION ONTARIO, THE ONTARIO LEGAL AID PLAN UNDER THE ADMINISTRATION OF THE LAW SOCIETY OF UPPER CANADA AND ROSS IRWIN; RE TENANT HOTLINE INC.; RE NEIGHBOURHOOD LEGAL SERVICES; RE INJURED WORKERS' CONSULTANTS.....(Aug.)	862
Religious Exemption - Timeliness - Religious exemption application untimely - Applicant arguing that the timeliness restriction conflicted with the <i>Ontario Human Rights Code</i> - Code not prevailing over <i>Labour Relations Act</i> - Application dismissed	
TORONTO, DEPARTMENT OF ENGLISH UNIVERSITY OF; RE DANA M. COLARUSSO; RE C.U.E.W., LOCAL 2.....(Aug.)	922
Remedies - Certification Where Act Contravened - Interference in Trade Unions - Intimidation and Coercion - Interference in trade union found where employer questioned employees about union support, prohibited and punished union solicitation on company property, shut down plant to permit meetings of union opposition, transferred union supporters from regular jobs, posted foremen at hotel where union meeting taking place - Interference and intimidation found where employer monitored union leafletting at plant gate - Certification inappropriate as majority not finding true wishes of employees not likely to be ascertained - Union continuing to sign up supporters after contraventions - Opposition of other employees responsible for slowing union campaign - Appropriate remedies including cease and desist order, posting in English and Portuguese, removal of warnings from employment	

files for solicitation, and provision to trade union of updated list of employees names and addresses

ONTARIO BUS INDUSTRIES INC.; RE C.A.W.; RE GROUP OF EMPLOY-  
EES.....(Nov.)

1115

Remedies - Change in Working Conditions - Discharge - Evidence - Interference in Trade Unions - Practice and Procedure - Unfair Labour Practice - Board taking into account findings of fact made by another panel with respect to issues put squarely before that panel in another proceeding involving the same parties - Respondent employer not appearing at hearing and therefore failing to discharge burden of proof - Multiple breaches of Act - Respondent not providing conduct money to witnesses it had summonsed and who had attended - Employer's actions may constitute unfair labour practice but Board has other means of enforcing the payment of conduct money - Board ordering that conduct money be paid and posting - Board declining to award costs

HAMILTON AUTOMATIC VENDING COMPANY LIMITED; RE CEMENT, LIME,  
GYPSUM AND ALLIED WORKERS DIVISION OF THE B.B.F. AND ITS LOCAL  
576.....(Mar.)

248

Remedies - Construction Industry - Damages - Strike - Union threatening general contractor with picket line which would cause an unlawful strike - Board finding that threat made but relief not warranted - Request for damages in the context of an illegal strike or lockout application is inappropriate - Board also declining to make declaration because threat was an isolated one

GUILD ELECTRIC LIMITED; RE I.U.O.E., LOCAL 793, JOHN MONTI, JOSEPH  
KENNEDY, MR. MONTAGNESE, MR. RICCIUTO; RE IBEW CONSTRUCTION  
COUNCIL OF ONTARIO ..... (Sept.)

969

Remedies - Construction Industry - Related Employer - Sole officer and shareholder of Green-King Ltd. is the construction manager of Widcor Ltd. - Nothing in common between the two general contractors except the individual - Widcor Ltd. winding down its construction business and going into land development - Widcor Ltd. using the construction services of Green-King Ltd. to construct a car dealership - Board finding sufficient common direction and control to make one employer declaration but declaration limited to protecting the union's bargaining rights to those instances where Green-King Ltd. and Widcor Ltd. together engage in working in the construction industry

WIDCOR LIMITED AND GREEN-KING LTD.; RE C.J.A., LOCAL 27 .....(Jan.)

66

Remedies - Intimidation and Coercion - Reconsideration - Complainant requesting reconsideration on ground Board failed to make decision on merits - Board not required to decide on merits where lack of appropriate remedy makes issue moot - Board having discretion to inquire into section 89 complaint - Application dismissed

CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U.....(Dec.)

1218

Remedies - Intimidation and Coercion - Unfair Labour Practice - Employer leasing trucks from employees - Term of arrangement that employees having right to drive own truck - Owner/driver of truck sharing with spare driver - Owner/driver opposing memorandum of settlement favoured by spare driver and revoking spare driver's use of truck - Union seeking order that spare driver continue to drive truck - Injunctive relief inappropriate since loss of use of truck not result or effect of alleged breach - Complaint dismissed

CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U..... (Oct.)

1021

Remedies - Jurisdictional Dispute - Settlement - Unfair Labour Practice - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to



settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint

REXWAY SHEET METAL LIMITED, U.A., LOCAL 46 AND D. CLARK, WATTS & HENDERSON LIMITED, ENGLISH & MOULD LIMITED; RE S.M.W., LOCAL 30.....(Nov.) 1154

Remedies - Practice and Procedure - Unfair Labour Practice - Complainant attempting in a letter to the Board following the conclusion of the hearing to expand the proceedings to litigate a matter not previously understood by the parties nor the Board to be an issue - No useful purpose would be served by inquiring into matter because matter complained of had been fully remedied - Complaint dismissed

GUDELJ, MR. IVAN; RE G.M.P.; RE CANRON INC.....(Aug.) 850

Remedies - Practice and Procedure - Union notifying Board that its remedial order had not been complied with and requesting that Board file the order in court - Board reviewing its procedures for dealing with allegations of non-compliance - Act not requiring a hearing where the fact of non-compliance is not put in issue - Order filed in court

CONRAD HEATING CO. AND JOE CONRAD; RE S.M.W., LOCAL 47..... (May) 437

Remedies - Strike - Concerted employee refusal to perform voluntary overtime constituting strike - Board reviewing jurisprudence on "overtime bans" and employer remedies - Board amending earlier order to reflect agreement of parties

CAMBRIDGE, CORPORATION OF THE CITY OF; RE A.T.U., LOCAL 1608, RUSSELL ABERNETHY, RAYMOND BLACKMORE, AND RUSSELL FALKINER.....(Nov.) 1095

Representation Vote - Certification - Complaint that a large number of employees did not understand the Notice of Taking of Vote because of language difficulties dismissed - Fact that sample ballot defaced prior to vote not leading Board to direct new vote - Electioneering by union in the form of statements and objects marked with the union logo not coercive - None of the allegations were raised until after the vote had been counted - No reason to direct new vote - Certificate issuing

NORTHFIELD METAL PRODUCTS LTD.; RE G.M.P. (A.F.L.-C.I.O., C.L.C.); RE GROUP OF EMPLOYEES .....(Jan.) 57

Representation Vote - Certification - Objectors requesting that results of representation vote be set aside and a new vote conducted due to union electioneering and intimidating conduct - Electioneering conducted by both union and objectors - No intimidation of voters by union in polling area - Conduct complained of not affecting secrecy of vote - Board not setting vote aside

ALLIED SIGNAL AUTOMOTIVE OF CANADA INC.; RE C.A.W.; RE GROUP OF EMPLOYEES..... (Sept.) 927

Representation Vote - Certification - Practice and Procedure - Pre-Hearing Vote - Eligibility of single voter or casting of single ballot in representation vote not causing Board to defer taking of representation vote or to hold further vote - Secrecy of choice not taking precedence over right of employee to choose in representation vote - Board directing counting of ballot

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION. (Oct.) 1050

Representation Vote - Pre-Hearing Vote - Practice and Procedure - Certification - Sole voter requesting Board not count ballot - Board already ordering counting of ballot in previous decision - Eligible voters aware of possibility of single vote beforehand in every case - Not

open to voter to change mind or withdraw ballot after vote - Act prohibiting retaliation against person participating in proceeding - Board to respond quickly to allegations of retaliation

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183;  
RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION. (Nov.)

1112

Sale of a Business - A&P buying Dominion through corporate vehicle New Dominion Stores Inc.  
- Unprofitable Dominion store in mall closed - NDSI corporately merged into A&P - A&P store opening in newly built part of mall 22 months later - Whether a sale at the time of the amalgamation or when store converted - Assumed that amalgamation constituted a sale - Board finding that A&P store in expanded mall was not a continuation of any part of the Dominion store but only an expansion of A&P's existing business - Application dismissed

NEW DOMINION STORES, THE GREAT ATLANTIC & PACIFIC COMPANY OF CANADA LIMITED; RE R.W.D.S.U., LOCAL 414; RE U.F.C.W., LOCALS 175 AND 633 ..... (May)

473

Sale of a Business - Bargaining Rights - Company buying patent and assets for security technology  
- Successorship not precluded by failure to buy manufacturing equipment since patents and expertise essence of commercial activity - Board finding no difficulty in obtaining equipment or contracting out - Bargaining rights for "greater Ottawa area" extending to company facilities at Carp - Unit description to be interpreted liberally since expansion outside Ottawa possible and parties not intending to limit bargaining rights to existing locations - Company arguing union constitution not allowing membership of employees of successor in sold business - Not necessary for union to show could have been certified to represent employees in question - Declaration of successorship and intermingling - Representation vote ordered

SENSTAR CORPORATION; RE SALARIED EMPLOYEES ALLIANCE  
COMDEV ..... (Nov.)

1159

Sale of a Business - Company acquiring lease, fixtures and leasehold improvements of former employer in retail food business - Union claiming successor rights - Board weighing factors including lengthy hiatus in operations, acquisition of lease and chattels through independent transactions, supply of employees from company's other stores - Application dismissed

STEINBERG INC., MIRACLE FOOD MART DIVISION AND OSHAWA  
HOLDINGS LIMITED, C.O.B. AS DUTCH BOY FOODS; RE U.F.C.W., LOCALS  
175 & 633 ..... (Oct.)

1066

Sale of a Business - Related Employer - Union seeking declaration of company's status as successor employer - Sole proprietor signing Working Agreement - Proprietorship business and assets subsequently sold to corporation - Both events transpiring before enactment of sale of business and related employer provisions - Sale of business and related employer provisions neither retroactive nor retrospective - Application dismissed

W.G. GALLAGHER CONSTRUCTION LIMITED; RE THE ONTARIO COUNCIL  
OF P.A.T.; RE P.A.T., DISTRICT COUNCIL 46; RE W.G. GALLAGHER CON-  
STRUCTION CO. AND W.G. GALLAGHER CONSTRUCTION LIMITED ..... (Nov.)

1191

School Boards and Teachers Collective Negotiations Act - Bargaining Unit - Certification - Whether supply instructors should be included in a unit of occasional teachers - Evolution in collective bargaining practice toward inclusion of supply instructors with occasional teachers in a single unit - Unit including both supply instructors and occasional teachers appropriate - Certificates issuing

MUSKOKA BOARD OF EDUCATION, THE; RE O.P.S.T.F.; RE O.S.S.T.F.; RE  
THE PEEL BOARD OF EDUCATION ..... (July)

775

School Boards and Teachers Collective Negotiations Act - Certification - Pre-Hearing Vote - *Ottawa-Carleton French-Language School Board Act, 1988* setting up a distinct school board for French-language education in the Ottawa area - Applicant applying to be certified for occasional teachers and part-time supply instructors employed by the respondent - Respondent arguing that it is not the employer - Board examining scheme of Act - Pre-hearing vote ordered - Outstanding issues to be addressed at hearing following vote

CONSEIL SCOLAIRE DE LANGUE FRANÇ  
AISE D'OTTAWA-CARLETON (SECTION CATHOLIQUE); RE ASSOCIATION  
DES ENSEIGNANTES ET DES ENSEIGNANTS SUPPLÉMENTAIRE D'OTTAWA-  
CARLETON ET LE MENTALITAIRE SUPPLEMENTAIRE..... (June)

575

Sector Determination - Construction Industry - Installation of storm sewer pipe and catch basins on private property - Characteristics of excavation work a function of purpose of excavation - End use being sewer - Work characteristics distinct and same irrespective of installation on private property - Work typically performed by speciality contractors - Statutory scheme not requiring Board to exercise discretion with view to enlarging ICI sector - Work within sewers and watermain sector

STEEN CONTRACTORS LIMITED, L.I.U.N.A., LOCAL 597 AND; RE U.A.,  
LOCAL 463; RE MILNE AND NICHOLLS/VANBOTS JOINT VENTURE; RE  
L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL; RE VALENTINE  
ENTERPRISES CONTRACTING, A DIVISION OF VALENTINE DEVELOPMENTS  
LIMITED; RE METROPOLITAN TORONTO SEWER AND WATERMAIN CON-  
TRACTORS ASSOCIATION; RE ONTARIO GENERAL CONTRACTORS ASSOCI-  
ATION; RE THE ONTARIO PIPE TRADES COUNCIL OF THE U.A.; RE CANA-  
DIAN AUTOMATIC SPRINKLER ASSOCIATION; RE U.A., LOCAL 853; RE  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS CONSTRUC-  
TION COUNCIL OF ONTARIO.....(Nov.)

1173

Sector Determination - Jurisdictional Dispute - Practice and Procedure - Whether work in dispute falls within ICI sector - Project involving the construction of a passenger terminal building at the airport - Specific work in dispute involving the departures level bridge - Board setting out its reasons for directing that notice of the s.150 proceeding be given to any person having a direct connection with the Terminal 3 site project - Decision in a s.150 proceeding has province-wide application if work characteristics are to determine whether the work falls within a particular sector - Notice should be given to the widest practical constituency

DUFFERIN CONSTRUCTION COMPANY; RE C.J.A., LOCAL 27; RE THE FOUN-  
DATION COMPANY OF CANADA LIMITED; RE L.I.U.N.A., LOCAL 183; RE  
DUFFERIN CONSTRUCTION COMPANY, A DIVISION OF ST. LAWRENCE  
CEMENT INC .....(Jan.)

25

Security Guard - Certification - Natural Justice - Practice and Procedure - Board recognizing potential notice problem for guards with irregular work pattern and no fixed place of employment - Board following usual practice where neither union or employer raise notice questions - Board to require employee addresses from employer for service by mail where union or employer identifying notice problem

MCLEAN SECURITY, 445733 ONTARIO LTD. C.O.B. AS; RE U.S.W.A. .... (Oct.)

1048

Settlement - Jurisdictional Dispute - Parties - Constituent of Carpenters' Employers' Bargaining Agency not entitled to be a party to the jurisdictional dispute - Whether an oral settlement of the complaint had been reached - Board finding that counter-offer made which nullified the offer of settlement - No longer any offer on the table for acceptance - No settlement - Hearings to continue

FERANO CONSTRUCTION LIMITED, L.I.U.N.A., LOCAL 527, AND L.I.U.N.A.,  
ONTARIO PROVINCIAL DISTRICT COUNCIL; RE C.J.A., LOCAL 2041 ..... (May)

446



Settlement - Jurisdictional Dispute - Remedies - Unfair Labour Practice - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint

REXWAY SHEET METAL LIMITED, U.A., LOCAL 46 AND D. CLARK, WATTS & HENDERSON LIMITED, ENGLISH & MOULD LIMITED; RE S.M.W., LOCAL 30.....(Nov.)

1154

Stated Case - Contempt - Evidence - Witness - Principal of respondent refusing to produce employment forms without covering over personal information - Union stating case to Divisional Court - Refusal without lawful excuse - Conduct of principal constituting contempt notwithstanding subsequent compliance with Board order prior to court hearing - Directions and orders of Board must be complied with - Finding of contempt giving principal a criminal record - Sentence of 30 days in jail - Sentence suspended upon principal being on good behaviour

PLAZA FIBREGLAS MANUFACTURING LIMITED, SABINA CITRON, CITRON AUTOMOTIVE DIVISION OF, PLAZA ELECTRO-PLATING LIMITED, CITCOR MANUFACTURING LTD., AND THE ONTARIO LABOUR RELATIONS BOARD; RE U.S.W.A..... (May)

479

Stated Case - Contempt - Evidence - Witness - Principal of respondent refusing to produce employment forms without covering over personal information - Union stating case to Divisional Court - Refusal without lawful excuse - Conduct of principal constituting contempt notwithstanding subsequent compliance with Board order prior to court hearing - Directions and orders of Board must be complied with - Finding of contempt giving principal a criminal record - Sentence of 30 days in jail - Sentence suspended upon principal being on good behaviour - Application by principal for leave to appeal to the Court of Appeal dismissed

PLAZA FIBERGLAS MANUFACTURING LIMITED, PLAZA ELECTROPLATING LIMITED, CITCOR MANUFACTURING LTD., SABINA CITRON, CITRON AUTOMOTIVE DIVISION OF; RE U.S.W.A. AND THE ONTARIO LABOUR RELATIONS BOARD ..... (June)

707

Stay - Adjournment - Certification - Charter of Rights and Freedoms - Judicial Review - Issue in certification cases involving the effect of the Charter on the security guard provision in the Act - Whether Charter issue should be postponed pending the release of the final decision in *Cuddy Chicks* concerning the Board's jurisdiction to deal with Charter issues - Adjournment denied - Labour relations considerations favouring expedition - Employer bringing application for judicial review on the grounds that, *inter alia*, the Board exceeded its jurisdiction in attempting to hear a Charter challenge and failed to observe the principles of natural justice by forcing the parties to submit to a procedure that would not afford them an opportunity to know the case they had to meet - Judicial review dismissed by Divisional Court

PINKERTON'S OF CANADA LTD.; RE O.L.R.B., RICHARD BIBEALT, C.G.A., NATIONAL PROTECTIVE SERVICES COMPANY LIMITED, THE BOARD OF MANAGEMENT FOR THE METROPOLITAN TORONTO ZOO, BURNS INTERNATIONAL SECURITY SERVICES LIMITED, GORDON A. SOUTHRN, WACKENHUT OF CANADA LIMITED, SHANE FREEMAN, U.S.W.A., LARRY BISHOP, INCO LIMITED, INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA.....(Aug.)

924

Stay - Bargaining Unit - Certification - Dependent Contractor - Judicial Review - Board certifying

union for two units of employees of taxi company, one of owner-operators and the other of drivers - Taxi company bringing motion to stay Board decision - Motion dismissed by Supreme Court of Ontario	
HAMILTON YELLOW CAB LIMITED AND TRANSPORTATION UNLIMITED INC.; RE R.W.D.S.U., AFL-CIO-CLC AND THE ONTARIO LABOUR RELATIONS BOARD.....	(July) 824
Strike - Collective Agreement - "No board" report issuing for two bargaining units on same day - Both units striking - Second unit having "bridge clause" in agreement providing for continuation until thirty days after effective date of new agreement with first unit - Employer seeking unlawful strike declaration for second unit - Act providing bridge provisions terminable on thirty days notice - Written notice not required - Actual notice given by union - Application dismissed	
CATERPILLAR OF CANADA LTD.; RE C.A.W. AND ITS LOCAL 252, TED MURPHY AND MEMBERS OF THE RESPONDENT LOCAL TRADE UNION EMPLOYED AS SALARIED EMPLOYEES BY CATERPILLAR OF CANADA LTD. ....	(Nov.) 1099
Strike - Construction Industry - Damages - Remedies - Union threatening general contractor with picket line which would cause an unlawful strike - Board finding that threat made but relief not warranted - Request for damages in the context of an illegal strike or lockout application is inappropriate - Board also declining to make declaration because threat was an isolated one	
GUILD ELECTRIC LIMITED; RE I.U.O.E., LOCAL 793, JOHN MONTI, JOSEPH KENNEDY, MR. MONTAGNESE, MR. RICCIUTO; RE IBEW CONSTRUCTION COUNCIL OF ONTARIO .....	(Sept.) 969
Strike - Picketing - Employees picketing during unpaid lunch breaks - Union not in a legal strike position - Picketing not designed to have any impact on the applicant's business - Picketing not in connection with nor constituting an unlawful strike - Application dismissed	
ART GALLERY OF ONTARIO, THE; RE O.P.S.E.U., O.P.S.E.U., LOCAL 535, TED LOUGHEAD, ED GORLEY, RUTH JONES, CARLA ROTH, KAREN HEFFERNAN, SHARON MCGILL, ELIZABETH KHERA, MICHAEL DOUGLAS, MARY GRETA, KERRY KIM, CATHERINE SPENCE, JILL CATE, GISELA NAVIA, BUD JOHNSTON, CLAIRA HARGITAY .....	(June) 537
Strike - Remedies - Concerted employee refusal to perform voluntary overtime constituting strike - Board reviewing jurisprudence on "overtime bans" and employer remedies - Board amending earlier order to reflect agreement of parties	
CAMBRIDGE, CORPORATION OF THE CITY OF; RE A.T.U., LOCAL 1608, RUSSELL ABERNETHY, RAYMOND BLACKMORE, AND RUSSELL FALKINER .....	(Nov.) 1095
Strike - Union members refusing to perform "struck work" - Members of a sister local lawfully locked out by their employer - Collective agreement not requiring employees to handle "struck work" - Whether sympathetic strike contrary to Act - Work refusal properly characterized as a strike - Board issuing direction which may have an educational effect in the printing industry where "struck work" clauses are common	
EMPRESS GRAPHICS INC., COUNCIL OF PRINTING INDUSTRIES OF CANADA ON BEHALF OF; RE G.C.I.U., LOCAL 500M, LITHOGRAPHERS, MIKE R. ZAJAC, EARL MCDONNELL AND CLIFF ROBINSON.....	(June) 587
Termination - Bargaining Unit - Collective Agreement - Employee - Evidence - Union arguing that bargaining unit included a large number of temporary agency workers - Collective	

agreement describing “all employee” unit - Agency workers not included on list at certification - Union never seeking to represent agency workers until termination application filed - Board determining that agency workers should not be treated as employees “in the unit” for purposes of the termination application - Relisted for hearing on issue of voluntariness of petition

WESTBURNE INDUSTRIAL ENTERPRISES LTD., NEDCO, DIVISION OF; RE TISH VASSAIR; RE TEAMSTERS UNION, LOCAL 419 ..... (June)

658

Termination - Construction Industry - Judicial Review - Parties - Practice and Procedure - Reconsideration - Termination application naming as respondents District Council and one local - International, District Council and all affiliated union locals necessary parties - Application dismissed at hearing - Board reconsidering its decision to dismiss and permitting applicants to amend the title of the application - Labourers Union bringing application for judicial review on the grounds that, *inter alia*, the Board erred in law by failing to notify the Union that it intended to reconsider its decision and by failing to afford the Union an opportunity to make submissions - Judicial review dismissed by Divisional Court

DOUBLE S CONSTRUCTION, MICHAEL VAN LANDEGHEM, TRACY VAN LANDEGHEM AND TERRY MANZUTTI, ONTARIO LABOUR RELATIONS BOARD, 657572 ONTARIO INC., C.O.B. AS; RE L.I.U.N.A., ONTARIO PROVINCIAL DISTRICT COUNCIL, AND ITS AFFILIATED LOCAL UNIONS L.I.U.N.A., LOCALS 183 ET AL ..... (June)

696

Termination - Evidence - Parties - Petition - Union relying on the labour relations environment in the workplace in attacking the voluntariness of the petition to terminate the union’s bargaining rights - Board hearing evidence but finding it of no relevance - Labour relations background only of relevance in an exceptional case where there is a pattern of notorious illegal anti-union conduct by employer - Whether an employee in one unit can apply to terminate union’s bargaining rights in two other units - Board finding that applicant having status to bring applications - Votes ordered

THOROLD I.G.A. MARKET; RE SANDRA TAYLOR; RE U.F.C.W., LOCAL 175; RE GROUP OF EMPLOYEES; RE U.F.C.W., LOCAL 633 ..... (Aug.)

907

Timeliness - Certification - Petition - Practice and Procedure - Reconsideration - Petitions sent to Board by registered mail on terminal date stamped with later date - Board finding petitions untimely in earlier proceeding - Postal registration stamp merely *prima facie* evidence of filing date and rebuttable by clear contrary evidence - Board finding petitions filed in a timely manner - Reconsideration appropriate

P & M ELECTRIC LIMITED, POMICO HOLDINGS INC., P & M ELECTRIC (1982) LTD., NORTHLAND ELECTRIC (ONT.) LIMITED; RE I.B.E.W. CONSTRUCTION COUNCIL OF ONTARIO, I.B.E.W., LOCAL 105, I.B.E.W., LOCAL 353; RE GROUP OF EMPLOYEES ..... (Oct.)

1064

Timeliness - Certification - Practice and Procedure - Objectors requesting an extension of the terminal date - Board does not extend the terminal date lightly - Three full days was sufficient notice to allow employees to object to the certification - Certificate issuing

CAREY’S RESTAURANTS (DUNDAS) INC.; RE H.E.R.E, LOCAL 75; RE GROUP OF EMPLOYEES ..... (Mar.)

233

Timeliness - Certification - Pre-Hearing Vote - Respondent and intervener arguing that pre-hearing vote should not be ordered because the application was untimely - Applicant asking that Board set aside earlier decision giving consent to early termination of collective agreement due to lack of notice to employees and fraud - Collective agreement would not bar applica-



tion if Board retroactively revokes its consent to the early termination - Vote ordered - Ballot box sealed

GOLDCREST FURNITURE LTD.; RE U.S.W.A.; RE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS, LOCAL 847 AFFILIATED WITH THE TEAMSTERS UNION; RE GROUP OF EMPLOYEES ..... (Apr.)

355

Timeliness - Crown Transfer - Union seeking declaration of Crown transfer for forestry survey and spraying contracted out by Ministry - Subject matter of contracts constituting "undertaking" within meaning of *Successor Rights (Crown Transfers) Act* - Undertakings "transferred" by tendering process - Transferees constituting "employers" - Performance of work by Crown employees immediately prior to transfer not prerequisite - Nothing in *Successor Rights (Crown Transfers) Act* to suggest union delay in seeking declaration releasing employer from effect of collective agreement - Board declaring Crown transfer

DUNNING PAVING LIMITED, THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION, AND; RE O.P.S.E.U.; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF NATURAL RESOURCES, AND BARRY LIGHTFOOT; RE SMITH FORESTRY ENTERPRISES; RE HOTCHKISS FORESTRY ENTERPRISES; RE JOHN KNIGHT AND LORRAINE NORRIS C.O.B. AS AGASSIZ FORESTRY/ENVIRONMENTAL SERVICES; RE NICOL SEGUIN; RE JOHN MCCORMACK; RE ELSIE MCCORMACK; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES, AND WAYNE FORBES C.O.B. AS FORBES JANITORIAL SERVICES ..... (Oct.)

1028

Timeliness - Religious Exemption - Religious exemption application untimely - Applicant arguing that the timeliness restriction conflicted with the *Ontario Human Rights Code* - Code not prevailing over *Labour Relations Act* - Application dismissed

TORONTO, DEPARTMENT OF ENGLISH UNIVERSITY OF; RE DANA M. COLARUSSO; RE C.U.E.W., LOCAL 2 ..... (Aug.)

922

Trade Union - Certification - Pre-Hearing Vote - Trade Union Status - Whether application barred due to six month bar in place against another local of the same union - Pre-hearing vote ordered but ballot box sealed - Issue of trade union status of applicant to be dealt with at the hearing to be scheduled to hear the merits of entertaining the application

GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS UNION, LOCAL 938; RE THE ASSOCIATION OF MUNICIPAL EMPLOYEES (Apr.)

352

Trade Union - Certification - Trade Union Status - Applicant so named had not been found to be a trade union in any previous proceeding - Applicant leading evidence at hearing to show that it was the same organization which had been found to be a trade union in another proceeding - Applicants for certification cautioned to consistently use the same name - Jurisprudence on issue reviewed

BUTCHER ENGINEERING ENTERPRISES LIMITED, THE; RE TEAMSTERS UNION, LOCAL 880 ..... (Apr.)

332

Trade Union - Certification - Trade Union Status - Applicant's membership cards in English and French - Neither English nor French name that under which the applicant made this application - Board discussing the effect of s.105 of the Act - Applicant adducing documentary and oral evidence to show that it was the organization which had been found to be a trade union in an earlier proceeding - Applicant found to be a trade union

GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS UNION, LOCAL 91; RE ASSOCIATION OF MUNICIPAL EMPLOYEES; RE C.U.P.E. .... (Mar.)

241

- Trade Union - Certification - Trade Union Status - Whether applicant entitled to the benefit of the presumption of trade union status in s.105 - Board is concerned with differences of substance between a "label" which has been found to identify a union and the label used by the applicant for certification - Board will not concern itself with minor mistakes in the naming of an applicant for certification - Applicant entitled to benefit of presumption in s.105 - Certificates issuing
- PIONEER MECHANICAL LIMITED; RE U.A., LOCAL 46.....(Mar.) 277
- Trade Union - Certification - Whether six month bar imposed against a sister local following an unsuccessful vote should operate as against the applicant local union - No evidence that applicant was the alter ego to the sister local or that it was applying in name only - Bar not operating as against the applicant
- GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS UNION, LOCAL 938; RE THE ASSOCIATION OF MUNICIPAL EMPLOYEES (Aug.) 846
- Trade Union - Conciliation - Practice and Procedure - Reference - Trade Union Status - Union Successor Status - Objecting employees permitted to participate in Ministerial reference - Two union locals taking steps to merge - Whether "predecessor" local still in existence so as to be entitled to request a conciliation officer - Board discussing trade union reorganizations - Board finding that union local still existed as a trade union at the time it requested a conciliation officer
- KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Feb.) 149
- Trade Union Status - Bargaining Rights - Certification - First Contract Arbitration - Reconsideration - Applicant seeking to amend its name - Board permitting name to be amended - No prejudice to respondent - First contract application adjourned sine die pending the disposition of the union's request for reconsideration in a certification matter
- KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 .....(Aug.) 852
- Trade Union Status - Certification - Employer recognizing the applicant as the representative body for a group of employees for a number of years - Whether the applicant is a trade union - Whether employer support so as to prohibit Board from certifying applicant - Board rejecting proposition that an organization which includes managerial persons in its membership cannot be a trade union - Not critical that an applicant establish a technically satisfactory constitutional continuum if it has been in existence a long time - Board discussing ways a trade union may be brought into existence - Applicant found to be a trade union - Certification of applicant not prohibited by s.13
- ONTARIO HYDRO; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES; RE C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000; RE THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.A. STEVENSON, AND MICHELLE MORRISSEY-O'RYAN AND GEORGE ORR ON BEHALF OF CERTAIN OBJECTING EMPLOYEES..... (Feb.) 185
- Trade Union Status - Certification - Practice and Procedure - Applicant notified that it had not been found to be a trade union under the name in which it had applied - Applicant requesting that its name on the application be amended - Board satisfied that applicant had made a *bona fide* mistake - Amendment permitted - No hearing necessary - Vote ordered
- BLUE BELL CANADA INCORPORATED; RE A.C.T.W.U.; RE GROUP OF EMPLOYEES ..... (May) 412
- Trade Union Status - Certification - Practice and Procedure - Pre-Hearing Vote - Applicant for certification is expected to correctly name itself - Statements of applicant's affiliations do not belong in the title portion of the certification application - Benefit of s.105 is unavailable

able to the applicant unless it can show that it is a continuation of one of the organizations previously found by the Board to be a trade union - Ballot box sealed - Applicant will be required to show it is a trade union

BUTCHER ENGINEERING ENTERPRISES LIMITED, THE; RE TEAMSTERS,  
LOCAL UNION NO. 880..... (Feb.)

109

Trade Union Status - Certification - Practice and Procedure - Respondent alleging that applicant had not proven its trade union status - Applicant arguing it was the same organization that had previously been found to be a trade union - Where any deviation in applicant's name from name Board has in its files a hearing will result - In order to benefit from presumption in s.105 an applicant must style itself in exactly the same fashion as the organization which has already been granted "status" - Board satisfied after hearing evidence that applicant could benefit from previous trade union determination - Argument that employees would be misled as to who was the true applicant dismissed

HUMPTY DUMPTY FOODS LIMITED; RE MILK AND BREAD DRIVERS, DAIRY  
EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647;  
RE THE RETAIL, WHOLESALE BAKERY AND CONFECTIONERY WORKERS'  
UNION, LOCAL 461 OF THE R.W.D.S.U., AFL:CIO:CLC: ..... (Feb.)

147

Trade Union Status - Certification - Pre-Hearing Vote - Trade Union - Whether application barred due to six month bar in place against another local of the same union - Pre-hearing vote ordered but ballot box sealed - Issue of trade union status of applicant to be dealt with at the hearing to be scheduled to hear the merits of entertaining the application

GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS  
UNION, LOCAL 938; RE THE ASSOCIATION OF MUNICIPAL EMPLOYEES (Apr.)

352

Trade Union Status - Certification - Trade Union - Applicant so named had not been found to be a trade union in any previous proceeding - Applicant leading evidence at hearing to show that it was the same organization which had been found to be a trade union in another proceeding - Applicants for certification cautioned to consistently use the same name - Jurisprudence on issue reviewed

BUTCHER ENGINEERING ENTERPRISES LIMITED, THE; RE TEAMSTERS  
UNION, LOCAL 880 ..... (Apr.)

332

Trade Union Status - Certification - Trade Union - Applicant's membership cards in English and French - Neither English nor French name that under which the applicant made this application - Board discussing the effect of s.105 of the Act - Applicant adducing documentary and oral evidence to show that it was the organization which had been found to be a trade union in an earlier proceeding - Applicant found to be a trade union

GLOUCESTER, THE CORPORATION OF THE CITY OF; RE TEAMSTERS  
UNION, LOCAL 91; RE ASSOCIATION OF MUNICIPAL EMPLOYEES; RE  
C.U.P.E. .... (Mar.)

241

Trade Union Status - Certification - Trade Union - Whether applicant entitled to the benefit of the presumption of trade union status in s.105 - Board is concerned with differences of substance between a "label" which has been found to identify a union and the label used by the applicant for certification - Board will not concern itself with minor mistakes in the naming of an applicant for certification - Applicant entitled to benefit of presumption in s.105 - Certificates issuing

PIONEER MECHANICAL LIMITED; RE U.A., LOCAL 46..... (Mar.)

277

Trade Union Status - Conciliation - Practice and Procedure - Reference - Trade Union - Union Successor Status - Objecting employees permitted to participate in Ministerial reference - Two union locals taking steps to merge - Whether "predecessor" local still in existence so as



to be entitled to request a conciliation officer - Board discussing trade union reorganizations - Board finding that union local still existed as a trade union at the time it requested a conciliation officer

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Feb.) 149

Unfair Labour Practice - Certification - Construction Industry - Intimidation and Coercion - Membership Evidence - Employer alleging that union threatened employees with closing down the job unless they signed cards - Improper comments which could arguably cause employees to be concerned about their continued employment made by rank-and-file employee as part of his "salesmanship" of the union not leading Board to question the voluntariness of the membership evidence filed - Misrepresentations made by union official immediately clarified by same official the next day - Membership evidence voluntary - Certificate issuing

COVELLO BROTHERS LIMITED; RE L.I.U.N.A., LOCAL 837; RE C.J.A., LOCAL 38..... (Feb.) 119

Unfair Labour Practice - Certification - Construction Industry - Practice and Procedure - Pre-Hearing Vote - Applicant union seeking to convert its certification application in which a pre-hearing vote had been requested to one in which no such vote is requested - Board denying request - Unfair labour practice complaint that employer transferred two employees out of bargaining unit to frustrate certification application - Complaint dismissed - Employees in question not permitted to vote - One ballot left to count - Ballot of single employee to be unsealed and counted unless objection received from party

MOLLENHAUER LIMITED; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183; RE METROPOLITAN TORONTO APARTMENT BUILDERS ASSOCIATION (Sept.) 972

Unfair Labour Practice - Certification - Intimidation and Coercion - Reference to two-tiered union dues made by ordinary employee soliciting union membership - Reasonable employee not likely to be influenced by statements of fellow employee lacking power over union dues and engaged in partisan salesmanship - Employees having opportunity to seek clarification - Inaccurate statements in literature distributed by employer and union mere partisan salesmanship - Board refusing to discount membership evidence and certifying union

VENTURE INDUSTRIES CANADA LTD.; RE C.A.W.; RE GROUP OF EMPLOYEES..... (Oct.) 1074

Unfair Labour Practice - Certification Where Act Contravened - Change in Working Conditions - Interference in Trade Unions - Union alleging that employer failed to give its usual annual wage increase during the freeze - Reasonable expectations of employees contain an objective element - No breach of freeze - No interference with trade union - Ballots cast in representation vote ordered counted

COCA-COLA LTD.; RE U.F.C.W.; RE GROUP OF EMPLOYEES ..... (May) 427

Unfair Labour Practice - Certification Where Act Contravened - Charter of Rights and Freedoms - Judicial Review - Board determining that lay off of workers constituting unfair labour practice - Union certified pursuant to s.8 - Reverse onus not contrary to Charter - Employer and employees bringing applications for judicial review on the grounds that, *inter alia*, the Board misled the employees as to the evidence to be adduced and failed to find the reverse onus provision to be contrary to the Charter - Judicial reviews dismissed by Divisional Court

KNOB HILL FARMS LIMITED, THE ONTARIO LABOUR RELATIONS BOARD AND U.F.C.W., LOCAL 206 AND; RE DONNA BAYDAK ON BEHALF OF A GROUP OF 156 EMPLOYEES ..... (June) 697

- Unfair Labour Practice - Certification Where Act Contravened - Discharge for Union Activity - Interference in Trade Unions - Employer breaching Act by asking employees who had joined the union - Statements made at captive audience meeting breach of Act - Employer not meeting onus of demonstrating that it did not lay off employees because of the organizing campaign - Names of employees who were laid off contrary to the Act included on the list of employees - Certificates issuing - Unnecessary to determine s.8  
 RAINSCREEN METAL SYSTEMS INCORPORATED; RE S.M.W., LOCAL 30. (May) 482
- Unfair Labour Practice - Certification Where Act Contravened - Evidence - Membership Evidence - Evidence of witness who was not subject to full cross-examination admissible - Sur-reptitiously made tape-recording of a "captive" audience meeting of employees convened by an employer admissible in unfair labour practice complaint - Viva voce evidence permitted on membership cards missing dates - Threats and questioning of employees concerning the union breach of Act - Statements made at "captive" audience meeting breach of Act - Follow-up meeting not curing breaches - Discharge of employee after the union filed an unfair labour practice complaint on his behalf breach of Act - Union certified pursuant to s.8  
 ROYCE DUPONT POULTRY PACKERS; RE U.F.C.W., LOCAL 175, AFL-CIO-CLC; RE GROUP OF EMPLOYEES ..... (May) 492
- Unfair Labour Practice - Change in Working Conditions - Discharge - Evidence - Interference in Trade Unions - Practice and Procedure - Remedies - Board taking into account findings of fact made by another panel with respect to issues put squarely before that panel in another proceeding involving the same parties - Respondent employer not appearing at hearing and therefore failing to discharge burden of proof - Multiple breaches of Act - Respondent not providing conduct money to witnesses it had summonsed and who had attended - Employer's actions may constitute unfair labour practice but Board has other means of enforcing the payment of conduct money - Board ordering that conduct money be paid and posting - Board declining to award costs  
 HAMILTON AUTOMATIC VENDING COMPANY LIMITED; RE CEMENT, LIME, GYPSUM AND ALLIED WORKERS DIVISION OF THE B.B.F. AND ITS LOCAL 576 ..... (Mar.) 248
- Unfair Labour Practice - Collective Agreement - Duty to Bargain in Good Faith - Collective agreement containing COLA clause negotiated - Employer believing COLA clause was suspended for the life of the agreement - Employer alleging that union breached its bargaining duty by not informing the employer of its mistaken belief - Union not obliged to question the employer's thinking when it makes a monetary offer - Complaint dismissed  
 NIAGARA BRONZE LIMITED; RE G.M.P. AND JACK ERSKINE, ET AL ..... (Aug.) 857
- Unfair Labour Practice - Construction Industry - Construction Industry Grievance - Duty of Fair Representation - Practice and Procedure - Union filing a grievance with the Board alleging that the employer had repeatedly breached the collective agreement - Union considered the litigation to be long, costly and unpredictable - Grievance settled prior to hearing following ratification by a majority of the bargaining unit members - Complainants considering terms of settlement unsatisfactory - Delay of 13 months before filing fair representation complaint - Board declining to inquire further into complaint on the basis of numerous policy considerations - Complaint dismissed  
 CARTER, MARK AND BRAD CARTER; RE S.M.W., LOCAL 539; RE IMPERIAL INSULATION & ROOFING (1982) LIMITED ..... (Feb.) 112
- Unfair Labour Practice - Construction Industry - Evidence - Judicial Review - Picketing - Picketing by Labourers Union found to be in breach of the Act - Purpose of picketing was to induce employers to grant bargaining rights to Labourers Union - Board granting declara-

tory relief to complainant Carpenters Union but not nullifying collective agreements - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board refused to permit the applicant to lead evidence going to remedy - Judicial review dismissed by Divisional Court

BAY-TOWER HOMES COMPANY LTD., BAY-TOWER MANAGEMENT INC., LEDI PROPERTIES INC., 518270 ONTARIO LIMITED, 554614 ONTARIO LIMITED; RE L.I.U.N.A., LOCAL 183, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27..... (June)

695

Unfair Labour Practice - Construction Industry - Judicial Review - Practice and Procedure - Complaint by Carpenters Union that Labourers Union negotiated collective agreements which contained subcontracting clauses requiring home builders to subcontract work to contractors in contractual relations with Labourers Union notwithstanding that the Union did not represent any of the employees employed by the home builders - Board declining to inquire into complaint due to delay in bringing matter on for hearing - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board wrongfully declined to exercise its jurisdiction and failed to observe the rules of natural justice in refusing to inquire into the complaint - Judicial review dismissed by Divisional Court - Application by Carpenters Union for leave to appeal to the Court of Appeal dismissed

DELLBROOK HOMES, L.I.U.N.A., LOCAL 183, THE TORONTO HOUSING LABOUR BUREAU, PHILMOR DEVELOPMENTS LIMITED, MOR-ALICE CONSTRUCTION LIMITED, GREENPARK HOMES, HERON HOMES, BRAMALEA LIMITED, VICTORIA WOOD DEVELOPMENT CORPORATION INC., MICHAEL REILLY, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27..... (July)

823

Unfair Labour Practice - Damages - Parties - Practice and Procedure - Reconsideration - Complainants arguing that Board erred in awarding damages only to the complainants - Argument that damages should be afforded to all employees affected by the breach of the Act dismissed - A complainant must have the authority to represent the grievors' interests - Complainants gave no indication during the proceedings that they were authorized to make a complaint on behalf of any other employees - Reconsideration application dismissed

CUDDY FOOD PRODUCTS LTD.; RE R.W.D.S.U., AFL:CIO:CLC.; RE U.F.C.W., LOCAL 175 AND U.F.C.W., AFL-CIO-CLC; RE JOHN HENSON AND 25 OTHERS; RE DEB JOHNSTON AND OTHERS ..... (Feb.)

126

Unfair Labour Practice - Dependent Contractor - Discharge for Union Activity - Employee - Union alleging that grievor was discharged in contravention of Act - Employer arguing that grievor was not an employee but an independent contractor - Employer in business of hauling raw forest products from logging sites to mills - Grievor was a hauling contractor - Whether grievor a dependent contractor and therefore an employee or an independent contractor - Grievor found to be an independent contractor - Complaint dismissed

ATWAY TRANSPORT INC.; RE I.W.A..... (June)

540

Unfair Labour Practice - Discharge - Discharge of one of the main employee organizers for the CAW two months after the CAW was certified - Employee discharged because he entered the Personnel Manager's office without permission - Board dismissing complaint - Employee not discharged because he attended the certification hearing or because of his union activity generally

RONAL CANADA INC.; RE C.A.W ..... (Jan.)

60

Unfair Labour Practice - Discharge for Union Activity - Bartender discharged during his probationary period - Comfortable situation existing at workplace between management and long-term employees where the collective agreement not strictly adhered to - Equilibrium



threatened when bartender hired - Discharge not contravening Act - Alleged theft was the only cause for the discharge

BERESFORD TAVERN, 446285 ONTARIO LIMITED C.O.B.; RE LOCAL 280 OF THE INTERNATIONAL BEVERAGE DISPENSERS' AND BARTENDERS' UNION OF THE H.E.R.E. .... (May)

405

Unfair Labour Practice - Duty of Fair Representation - Evidence - Health and Safety - Practice and Procedure - Complainant fired for engaging in an illegal work stoppage - Discharge upheld by arbitrator - Complainant alleging he brought concern to union prior to arbitration that he was fired because he was the safety representative and that concern was not pursued - Respondent employer arguing that OHSA complaint should be dismissed because the complainant had elected to proceed by way of arbitration - OHSA complaint dismissed - Election made where the discipline of a worker has been litigated at arbitration - Fair representation complaint to proceed

ZALEV BROTHERS LIMITED; RE ROBERT MCINTYRE; RE U.S.W.A., LOCAL 14045 ..... (July)

810

Unfair Labour Practice - Duty of Fair Representation - Evidence - Practice and Procedure - Complainant alleging union did not represent him properly in having his seniority reinstated - Union moving for non-suit after complainant completing his evidence - Employer not joining in non-suit - Union submitting it should not be put to its election to call evidence - Putting union to its election would be futile because the employer could still call evidence - Board refusing to entertain non-suit motion - Complaint dismissed

BALKOS, PAUL; RE LAWSON PACKAGING TORONTO, A DIVISION OF THE LAWSON MARDON GROUP LIMITED AND G.C.I.U., LOCAL 500M ..... (Sept.)

932

Unfair Labour Practice - Duty of Fair Representation - Failure to pursue grievances to arbitration not breach of fair representation duty - Board not deciding issue of whether union's refusal to give the complainant a copy of the grievance filed on his behalf amounted to a breach of the Act - No remedy would have been granted in any event - Complaint dismissed

LINDSAY, BALFORD; RE C.A.W., LOCAL 1451; RE BUDD CANADA INC... (Mar.)

264

Unfair Labour Practice - Duty of Fair Representation - Ratification and Strike Vote - Complainant occasional teacher failing to obtain a permanent teaching position and failing to obtain assignments as an occasional teacher - Employer denying complainant access to his complete personnel file - Whether union's failure to pursue grievance constituted a breach of fair representation duty - Whether the notice of union meetings violated the Act - Complaint dismissed - Complainant failing to show he had any entitlement to jobs or his file

ROCCA, PETER; RE ONTARIO CATHOLIC OCCASIONAL TEACHERS ASSOCIATION; RE METROPOLITAN SEPARATE SCHOOL BOARD ..... (Apr.)

371

Unfair Labour Practice - Duty of Fair Representation - Union officials handling a bump - Employer challenging one of the job placements - Union and employer making special arrangements for employee after union admitted employee was not qualified for the job - Employee farther down in bumping line bringing fair representation complaint - Complaint dismissed

KALLA, NURDIN; RE A.T.U., LOCAL 113; RE TORONTO TRANSIT COMMISSION ..... (May)

459

Unfair Labour Practice - Duty of Fair Representation - Whether a trade union's duty of fair representation obliges it to represent bargaining unit employees in connection with workers' compensation proceedings - Extent of duty is co-extensive with the union's authority as

exclusive bargaining agent - Union's duty does not extend to workers' compensation claims  
- Complaint dismissed

LOPEZ, LUIS; RE C.U.P.E. .... (May) 464

Unfair Labour Practice - Duty to Bargain in Good Faith - Employer - Related Employer - Life insurance company contracting out cleaning services - No common control or direction between the company and the cleaning contractor - Related employer application dismissed - Argument that life insurance company was the true employer of the workers performing the cleaning work dismissed - Complaint that cleaning contractor and life insurance company conspired to get rid of the unionized cleaners dismissed - Complaint against life insurance company that it was motivated by anti-union considerations dismissed - Complaint that company failed to disclose during collective bargaining its decision to contract out the cleaning services dismissed

METROPOLITAN LIFE INSURANCE COMPANY; RE I.U.O.E., LOCAL 796; RE ALLEN MAINTENANCE LTD. .... (Feb.) 175

Unfair Labour Practice - Duty to Bargain in Good Faith - Respondent failing to disclose its intention to shut down one of its steam turbine generators operated by bargaining unit employees - Four positions eliminated and 21 employees realigned - *De facto* decision to shut down generator made prior to or in course of collective bargaining between parties - Breach of bargaining duty - Question of remedy remitted to parties

CANADIAN PACIFIC FOREST PRODUCTS LIMITED; RE I.U.O.E., LOCAL 865 ..... (June) 569

Unfair Labour Practice - Interference in Trade Unions - Bargaining unit position eliminated and persons in those positions promoted out of unit to a pre-existing managerial classification - Whether any anti-union animus in the expansion of the managerial classification or in the number of people promoted - Employer distributing to both unionized and non-unionized employees pamphlets enunciating its personnel policy - Whether contrary to Act - Complaint dismissed with respect to the promotion of bargaining unit personnel but allowed with regards to the pamphlets - Effect of pamphlets was to confuse employees concerning the nature of the union's representation

SIMPSON'S LIMITED; RE R.W.D.S.U., AFL-CIO:CLC: AND ITS LOCAL 1000 (May) 513

Unfair Labour Practice - Interference in Trade Unions - Union spokesman banned from employer's premises following altercation with management - Employer willing to deal with any other union representative or this representative but off its premises - Employer not engaged in a scheme to undermine the union's bargaining position - Problems best resolved through discussion and not Board intervention

VICTORY SOYA MILLS; RE TEAMSTERS UNION, LOCAL 1247 CHEMICAL, ENERGY AND ALLIED WORKERS ..... (June) 653

Unfair Labour Practice - Intimidation and Coercion - Remedies - Employer leasing trucks from employees - Term of arrangement that employees having right to drive own truck - Owner/driver of truck sharing with spare driver - Owner/driver opposing memorandum of settlement favoured by spare driver and revoking spare driver's use of truck - Union seeking order that spare driver continue to drive truck - Injunctive relief inappropriate since loss of use of truck not result or effect of alleged breach - Complaint dismissed

CHINOOK CHEMICALS COMPANY, G. LEMAIRE AND; RE E.C.W.U. .... (Oct.) 1021

Unfair Labour Practice - Judicial Review - Practice and Procedure - Complaint by Carpenters Union that Labourers Union negotiated collective agreements which contained subcontracting clauses requiring home builders to subcontract work to contractors in contractual relations with Labourers Union notwithstanding that the Union did not represent any of the

employees employed by the home builders - Board declining to inquire into complaint due to delay in bringing matter on for hearing - Carpenters Union bringing application for judicial review on the grounds that, *inter alia*, the Board wrongfully declined to exercise its jurisdiction and failed to observe the rules of natural justice in refusing to inquire into the complaint - Judicial review dismissed by Divisional Court

DELLBROOK HOMES, THE TORONTO HOUSING LABOUR BUREAU, PHILMOR DEVELOPMENTS LIMITED, MOR-ALICE CONSTRUCTION LIMITED, GREENPARK HOMES, HERON HOMES, BRAMALEA LIMITED, VICTORIA WOOD DEVELOPMENT CORPORATION INC., TWO STAR CONSTRUCTION LTD., MICHAEL REILLY, AND THE ONTARIO LABOUR RELATIONS BOARD; RE C.J.A., LOCAL 27; RE L.I.U.N.A., LOCAL 183.....(Mar.)

315

Unfair Labour Practice - Judicial Review - Related Employer - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, *inter alia*, the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court

G.P. CONSTRUCTION, 556631 ONTARIO LIMITED, C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD..... (June)

696

Unfair Labour Practice - Judicial Review - Related Employer - Construction companies declared to be one employer - Adjournment of hearing to determine quantum of damages on the ground of insufficient notice to one corporation denied - Corporation bringing application for judicial review on the grounds that, *inter alia*, the Board erred in finding that related business activities were carried on and in denying the adjournment - Judicial review dismissed by Divisional Court - Application for leave to appeal to the Court of Appeal dismissed

G.P. CONSTRUCTION, 556631 ONTARIO LIMITED C.O.B. AS; RE I.B.E.W., LOCAL 1687, AND THE ONTARIO LABOUR RELATIONS BOARD..... (Oct.)

1092

Unfair Labour Practice - Jurisdictional Dispute - Remedies - Settlement - Union alleging breach of settlement regarding jurisdictional dispute - Respondents arguing settlement extinguishing Board jurisdiction - Respondents arguing Section 89 remedial power applying only to settlement of complaints filed originally under Section 89 - Board asserting jurisdiction - Board finding Section 89 remedial power available even where settlement non-Section 89 complaint

REXWAY SHEET METAL LIMITED, U.A., LOCAL 46 AND D. CLARK, WATTS & HENDERSON LIMITED, ENGLISH & MOULD LIMITED; RE S.M.W., LOCAL 30.....(Nov.)

1154

Unfair Labour Practice - Practice and Procedure - Remedies - Complainant attempting in a letter to the Board following the conclusion of the hearing to expand the proceedings to litigate a matter not previously understood by the parties nor the Board to be an issue - No useful purpose would be served by inquiring into matter because matter complained of had been fully remedied - Complaint dismissed

GUDELJ, MR. IVAN; RE G.M.P.; RE CANRON INC.....(Aug.)

850

Union Successor Status - Conciliation - Practice and Procedure - Reference - Trade Union - Trade Union Status - Objecting employees permitted to participate in Ministerial reference - Two union locals taking steps to merge - Whether "predecessor" local still in existence so as to be entitled to request a conciliation officer - Board discussing trade union reorganizations -



Board finding that union local still existed as a trade union at the time it requested a conciliation officer

KNOB HILL FARMS LIMITED; RE U.F.C.W., LOCAL 206 ..... (Feb.) 149

Union Successor Status - International union merging two locals - Board making declaration of successor union for all sectors of the construction industry

J.S.H. MUELLER LTD., ELECTRICAL TRADE BARGAINING AGENCY AND ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO; RE I.B.E.W., LOCAL 594; RE I.B.E.W., LOCAL 586 AND KEN J. WOODS..... (June) 610

Union Successor Status - Shop union changing its constitution to permit it to merge with another union and then voting to merge with the CAW - Board asked to consider dicta in *Astgen v. Smith* requiring unanimous consent to change constitution - Respondent arguing that the fundamental objects of a union cannot be amended by a majority - Board analyzing case and concluding that it was not entirely appropriate to considerations under s.62 - Board issuing declaration

MELNOR MANUFACTURING LTD.; RE C.A.W. .... (Apr.) 360

Witness - Adjournment - Evidence - Principal of respondent refusing to produce employment forms without covering over personal information - No lawful excuse for refusing to produce the documents as ordered by the Board - Board stating case to Divisional Court - Court ordering Board to give witness another opportunity to produce - Board scheduling another hearing at which adjournment request by respondent denied - Witness continuing to refuse production - Matter adjourned

PLAZA FIBREGLAS MANUFACTURING LIMITED AND PLAZA ELECTRO-PLATING LTD. AND CITRON AUTOMOTIVE INDUSTRIES AND SABINA CITRON; RE U.S.W.A..... (May) 528

Witness - Certification - Employee - Evidence - Practice and Procedure - Board direction to file and exchange documents on which parties intend to rely - Respondent employer concerned that it could not approach employees who may be summonsed for examination in order to obtain information and documents - No property in a witness - Proper for a party to communicate with any examinee before he or she begins testifying if it is for the purpose of obtaining information relevant to the proceedings

ONTARIO HYDRO; RE THE SOCIETY OF ONTARIO HYDRO PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES; RE C.U.P.E. - C.L.C. ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000; RE THE COALITION TO STOP THE CERTIFICATION OF THE SOCIETY ON BEHALF OF CERTAIN EMPLOYEES, TOM STEVENS, C.A. STEVENSON, AND MICHELLE MORRISSEY-O'RYAN AND GEORGE ORR ON BEHALF OF CERTAIN OBJECTING EMPLOYEES..... (Sept.) 983

Witness - Contempt - Evidence - Stated Case - Principal of respondent refusing to produce employment forms without covering over personal information - Union stating case to Divisional Court - Refusal without lawful excuse - Conduct of principal constituting contempt notwithstanding subsequent compliance with Board order prior to court hearing - Directions and orders of Board must be complied with - Finding of contempt giving principal a criminal record - Sentence of 30 days in jail - Sentence suspended upon principal being on good behaviour

PLAZA FIBREGLAS MANUFACTURING LIMITED, SABINA CITRON, CITRON AUTOMOTIVE DIVISION OF, PLAZA ELECTRO-PLATING LIMITED, CITCOR MANUFACTURING LTD., AND THE ONTARIO LABOUR RELATIONS BOARD; RE U.S.W.A..... (May) 528

Witness - Contempt - Evidence - Stated Case - Principal of respondent refusing to produce

employment forms without covering over personal information - Union stating case to Divisional Court - Refusal without lawful excuse - Conduct of principal constituting contempt notwithstanding subsequent compliance with Board order prior to court hearing - Directions and orders of Board must be complied with - Finding of contempt giving principal a criminal record - Sentence of 30 days in jail - Sentence suspended upon principal being on good behaviour - Application by principal for leave to appeal to the Court of Appeal dismissed

PLAZA FIBERGLAS MANUFACTURING LIMITED, PLAZA ELECTROPLATING LIMITED, CITCOR MANUFACTURING LTD., SABINA CITRON, CITRON AUTOMOTIVE DIVISION OF; RE U.S.W.A. AND THE ONTARIO LABOUR RELATIONS BOARD ..... (June)

707

Witness - Evidence - Health and Safety - Complainant calling Ministry health and safety inspector as witness - Director authorizing inspector to testify - *Occupational Health and Safety Act* providing inspector not compellable witness - Non-compellability waived - Inspector competent witness

BOEING CANADA/DEHAVILLAND DIVISION; RE JILL BETTES ..... (Dec.)

1213

Witness - Practice and Procedure - Board reviewing authority for enforcing attendance of witnesses - Board issuing arrest warrant for previously subpoenaed material witness who failed to attend

KING GLASS LIMITED/KING GLASS; RE P.A.T., LOCAL 1795 -GLAZIERS.. (Dec.)

1223

Witness - Practice and Procedure - Party calling witness responsible for providing Board with correct name and address for arrest warrant

REAL CARPENTERS; RE C.J.A., LOCAL 27 ..... (Dec.)

1250

***Ontario Labour Relations Board,  
400 University Avenue,  
Toronto, Ontario  
M7A 1V4***

ISSN 0383-4778



028230034







NOV 9 1990





3 1761 11469184 3